



**Chepwambok & another v Chepkemboi (Land Case 6 of 2022)  
[2025] KEELC 7520 (KLR) (29 October 2025) (Judgment)**

Neutral citation: [2025] KEELC 7520 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KAPSABET  
LAND CASE 6 OF 2022  
GMA ONGONDO, J  
OCTOBER 29, 2025**

**BETWEEN**

**MARY CHEPWAMBOK ..... 1<sup>ST</sup> PLAINTIFF**

**RAPHAEL TONUI ..... 2<sup>ND</sup> PLAINTIFF**

**AND**

**PAULINE CHEPKEMBOI ..... DEFENDANT**

**JUDGMENT**

1. At the heart of the instant suit are land reference Numbers Nandi/ Kamobo/2825, Nandi/ kamobo/913 And Nandi/kamobo/160, the suit parcels of land herein.
2. Originally, the suit was lodged at Eldoret High Court before it was transferred to Eldoret Environment and Land Court and then to this court on 9<sup>th</sup> March 2022 in the spirit of access to justice pursuant to Articles 3 (6) and 48 of *the Constitution* of Kenya 2010.
3. It is notable that there were some amendments to the parties' respective pleadings culminating to the defendant's reply to defence to counter claim duly filed on 1<sup>st</sup> March 2024.
4. The suit was partly heard on 1<sup>st</sup> March 2017 when the plaintiffs closed their case. On 24<sup>th</sup> October 2017, the suit was dismissed with costs to the defendant for non-appearance before it was reinstated for hearing.
5. The Plaintiffs through Kipruto Maritim and Company Advocates and initially represented by Anassi Momanyi and Company Advocates, instituted this suit vide the plaint dated 23<sup>rd</sup> January 2006 which was later amended on the 6<sup>th</sup> April, 2006 seeking the following orders;
  - a. A declaration that the Chief Kapsabet Location and the Land Disputes Tribunal Kapsabet Location lacked jurisdiction to entertain the claim over land reference Nandi/kamobo/2825



and Nandi/kamobo/913 and the decisions of the land tribunal and the chief are null and void ab initio.

- b. A declaration that the chief Kapsabet Location and the land disputes tribunal Kapsabet lacked jurisdiction to entertain a claim over land references number Nandi/kamobo/160 and Nandi/kamobo/913 and that it never entertained a dispute over land reference number Nandi/kamobo/2825
  - c. A declaration that there was no valid claim filed before the chief Kapsabet location and the land disputes tribunal Kapsabet capable of adjudication and adoption and that the adoption of the decision in Kapsabet Principal Magistrates Court land disputes tribunal No. 49 of 1997 is null and void.
  - d. The cancellation of the subdivision and intended sub division of land reference number Nandi/kamobo/913 and 2825 into land reference No. Nandi/kamobo/3672, 3673, 3674 and 3675 and the titles do revert to land reference No. Nandi/kamobo/913 and 2825 and or do remain as they are if no subdivision and transfer has been effected.
  - e. An order of inhibition to prevent the registration of any dealings over land references No. Nandi/kamobo/913, 3672 and 3673.
  - f. A declaration that the Plaintiffs are entitled to exclusive and quiet possession of the suit land to the exclusion of the Defendant
  - g. Costs of the suit.
6. In a nutshell, the plaintiffs' lamentation is that the 1<sup>st</sup> plaintiff is the registered owner of LR NO. Nandi/kamobo/2825 while the 2<sup>nd</sup> plaintiff is the registered owner of LR NO. Nandi/kamobo/913. That in the year 1997, the defendant orally filed a case before the Land Disputes Tribunal (LDT) Kapsabet Division and the Chief Kapsabet Location claiming purchaser's interest in LR. Numbers Nandi/kamobo/913 and 160 but the latter was non-existent at the time. That the defendant's claim was not filed and processed for hearing as required by the law and was time barred.
  7. Further, the plaintiffs asserted that the said chief and the LDT had no jurisdiction over the defendant's claim which is not legally enforceable. That therefore, the 1<sup>st</sup> plaintiff and the 2<sup>nd</sup> plaintiff are entitled to LR Numbers Nandi/kamobo/2825 and 913 and their resultant subdivisions respectively.
  8. By her statement of defence dated 29<sup>th</sup> March 2006 amended on 27<sup>th</sup> April 2006 and further amended on 9<sup>th</sup> December 2022 and filed on 22<sup>nd</sup> December 2022, the defendant through Kigen and Company Advocates, denied the plaintiffs' claim. He prayed that it be dismissed with costs.
  9. Simultaneous with the further statement of defence, the defendant filed a counter claim dated 9<sup>th</sup> December 2022 against the plaintiffs and stated that she is the owner of two acres of LR No. Nandi/kamobo/2825 (Formerly known as Nandi/kamobo/160) and two acres of land from LR No. Nandi/kamobo/913. That she has been staying thereon peacefully and uninterruptedly since 1972. That therefore, she is entitled to the two portions of land by adverse possession.
  10. Both the plaintiffs' Reply to the defendant's further amended statement of defence and Defence to counter claim dated 7<sup>th</sup> February 2024 as well as a reply to defence to the counter claim dated 28<sup>th</sup> February 2024 reiterating paragraphs 17 to 26 of the counter claim, denying the defence to counter claim and seeking that the defence and counter claim be struck out or dismissed and judgment be entered for the defendant as prayed in the counterclaim, are noted.



11. It is the duty of this court to rely on the evidence before it; see *Great Lakes Transport Company (U) Ltd-vs-Kenya Revenue Authority* (2009) KLR 720.
12. The 1<sup>st</sup> plaintiff, Mary Jepwambok (PW1) relied on her statement dated 7<sup>th</sup> February 2024 and list of documents of even date (P Exhibits 1, 2a to 6, 7, 8, 9, 11, 12 and 14) and further list of documents dated 8<sup>th</sup> March 2024 (P Exhibits 9 and 10) as part of her evidence. She stated that two acres be returned to her.
13. PW2, Joseph Kemboi Kipserem was given power of Attorney dated 28<sup>th</sup> June 2024 (P Exhibit 1) by the 2<sup>nd</sup> plaintiff whose statement dated 7<sup>th</sup> February 2024, he relied upon as part of his evidence. Also, he relied on (P Exhibits 1 to 11) herein.
14. PW3, Beatrice Maritim, a Court Administrator, Kapsabet Law Courts testified and produced a consent dated 16<sup>th</sup> June 1993 between Raphael Kimursi Tanui, the 2<sup>nd</sup> plaintiff and Pauline Chepkemboi, the defendant in Kapsabet PMCC No. 3 of 1993 that judgment be entered for the plaintiff (P Exhibit 12), the resultant order (P Exhibit 13) and the court order of 25<sup>th</sup> March 1999 in Kapsabet LDT No. 49 of 1997; The defendant-vs-both plaintiffs (P Exhibit 14) herein. It was her evidence that by the Panel of Elders' award contained in P Exhibit 14, the defendant, Pauline Chepkemboi was to get 3 acres from LR No. Nandi/kamobo/914, Kipkemboi Tenai get two acres from LR NO. Nandi/Kamobo/160 and the 2<sup>nd</sup> Plaintiff, Raphael Tanui to get two acres from LR No, Nandi/kamobo/913.
15. The testimonies of NO. 66583 PC James Mtiva (PW4), the defendant, Pauline Chepkemboi (DW1) as well as DW2, Francis Sirate Missos, are also borne in mind in entirety.
16. By the submissions dated 19<sup>th</sup> September 2025, learned counsel for the plaintiffs stated in part that the plaintiffs have proved their claim against the defendant and prayers in the plaint be granted. That defendant has not proved her adverse possession claim as premised upon section 7 of the *Limitation of Actions Act* Chapter 21 Laws of Kenya. Reliance was made on *Communication Commission of Kenya & 5 others-vs-Royal Media Services & 5 others* (2014) eKLR and *Mtana Lewa-vs-Kahindi Ngala Mwangandi* (2015) eKLR, among others, to reinforce the submissions.
17. In the submissions dated 28<sup>th</sup> July 2025, learned counsel for the defendant termed the plaintiffs' case bad in law and stale having been filed after 12 years. That therefore, the same be dismissed and the counter claim be allowed with costs. Counsel cited, inter alia, the case of *Mukuru Munge-vs-Florence Shingi Mwawana & 2 others* (2016) KECA 54 (KLR), section 7 of the *Civil Procedure Act* Chapter 21 Laws of Kenya, the case of *Independent Electoral and Boundaries Commission-vs>Maina Kiai & 5 others* (2017) eKLR, the case of *Public Trustee-vs-Wanduru Ndegwa* 91984) KECA 72 (KLR) to fortify the submissions.
18. It is established law that the issues for determination in a suit flow from either the pleadings or as framed by the parties for the court's determination; see *Great Lakes Transport Co. Ltd -vs- Kenya Revenue Authority* (2009) KLR 720 and Order 15 of the Civil Procedure Rules 2010.
19. Having taken into account the parties' respective pleadings, evidence and submissions, the issues for determination boil down to whether;
  - a. the Plaintiff's suit is res judicata
  - b. the Plaintiff's suit is time barred
  - c. Subject to a and b above, have the parties proved their respective claims to the requisite standard?



20. Res judicata principle is anchored upon Section 7 of the Civil Procedure Act Chapter 21 Laws of Kenya which provides that;

‘No court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such court.’

21. In the Black’s Law Dictionary 10<sup>th</sup> Edition at page 1504, the term ‘Res Judicata’ is defined as;

‘an issue that has been definitely settled by judicial decision’

22. Moreover, the three essential elements of the term are set out thereunder thus;

- a. An earlier decision on the issue.
- b. A final judgment on the merits, and
- c. The involvement of the same parties or parties in privity with the original parties.

23. Under cross examination, PW1 stated as follows;

‘.....I remember the case number Kapsabet SRMC No. 49 of 1997.....’

I remember first case between myself and Pauline was in 1993, case Kapsabet No. 3 of 1993.....I know the case no 49 of 1994 was referred to the Elders.

24. In re-examination, PW1 affirmed the existence of previous proceedings between the parties at Kapsabet Law Courts that;

‘..In relation to Civil case No. 3/1993 Kapsabet was between Raphael Tanui and Pauline Chepkemboi.....’

25. During cross examination, PW2 stated that;

‘...there was a dispute and there was Kapsabet Law Courts civil case No. 3 of 1993 thereof.....I do not understand whether it is an appeal from P Exhibit 5 (b).....’

26. Upon re-examination, PW2 was emphatic as follows;

‘.....P Exhibit 5 (b) captures civil suit LDT NO. 49/1997 and it was an award made in 1995.....’

27. It is evident that the instant dispute was first filed in court in the year 1993. The same was disposed of by a final judgment and it has been reopened by this suit.

28. A party cannot be allowed to reopen litigation merely on the basis that since the former litigation, there is another fact going exactly the same direction with the facts stated before, leading up to the same relief; see *Phosphate Sewage Co.vs.Molesom* (3). (1879) 4 A.C. 80 at p.814 EARL by CAIRNS, L.C cited in *Siri Ram Kaura-vs-M. J.E Morgan*, CA 71/1980 (1961) EA 462.

29. In the case of *Eunice Wangui Muturi-vs-Francis Kamande & another* (2017) eKLR, Obaga J reasoned to the effect that the case was filed over two decades ago. That public policy demands that litigation has to come to an end.



30. The cardinal principle is that litigation has to come to an end; see Halsbury's Laws of England 4<sup>th</sup> Edition Volume 22 at page 273.
31. As regards the second issue, section 37 of the *Limitation of Actions Act* Chapter 22 Laws of Kenya provides;
- “Where a person claims to have become entitled by adverse possession to land registered under any of the acts cited in section 37, to land or easement or land comprised in a lease registered under any of those acts, may apply to the High Court for an order that he be registered as the proprietor of the land or lease in place of the person then registered as proprietor of the land.”
32. The doctrine of adverse possession in Kenya is premised on Section 7 of the *Limitation of Actions Act*, which states; -
- “An action may not be brought by a any person to recover land after the end of twelve years from the date on which the right of action accrued to him or, if it first accrued to some person through whom he claims, to that person,”
33. The ingredients of adverse possession are well settled; see *Wilson Kazungu Katana & 101 others-vs-Salim Abdalla Bakshein & another* (2015) eKLR,
34. The plaintiffs' pleadings question the jurisdiction of the Chief Kapsabet Location and that of the LDT. The court is not unaware of the fair administrative remedy against the award of the LDT under Article 47 of *the Constitution* of Kenya 2010.
35. Furthermore, this suit is not an appeal from the previous decisions. Under cross examination, PW1 stated that there was no appeal from the award of the LDT adopted by the court.
36. Besides, P Exhibits 12, 13 and 14 as captured in the testimony of PW3 confirm the testimonies of PW1 and PW2. Plainly, there existed previous proceedings inclusive of a final judgment over the same subject matter involving the same parties herein. Therefore, both the plaintiff's suit and the defendant's counter claim are res judicata.
37. Wherefore, the plaintiff's suit initiated by amended plaint of 6<sup>th</sup> April 2006 and the defendant's counter claim dated 9<sup>th</sup> December 2022, be and are hereby dismissed.
38. By dint of the proviso to section 27 (1) of the *Civil Procedure Act* Chapter 21 Laws of Kenya and being guided by the Supreme Court of Kenya decision in *Rai & 2 others-vs-Rai & 3 others* (2014) eKLR, parties to bear their own costs herein.
39. It is so ordered.

**DATED AND DELIVERED AT KAPSABET THIS 29<sup>TH</sup> DAY OF OCTOBER 2025**

**HON G M A ONGONDO**

**JUDGE**

In the presence of;

Mr Mohammed instructed by Maritim learned counsel for the Plaintiffs

Ms Kigen learned counsel for the Defendant

Kariuki, Court Assistant

