

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT KAPSABET

ELCLC CASE NO. E008 OF 2024

GEOFREY KIPKEMEI MANYIM.....

PLAINTIFF

-VERSUS-

MAHMOUD CHEMWOR A TARUS (sued in his personal capacity and as the Administrator of the Estate of

KIPTARUS

CHEMWOROR-DECEASED)

.....DEFENDA

NT

JUDGMENT

1. The plaintiff through Rotich, Langat and Partners Advocates, lodged this suit against the defendant by a plaint dated 4th April 2024 for the following orders;
 - a) An order of declaration that the Plaintiff is indeed the bona fide purchaser for valuable consideration of the whole of that land parcel known as NANDI/CHEPKONGONY/983, the suit land herein.

b) An order compelling the Defendant to sign the transfer forms and provide the transfer documents being the original title Deed, his KRA PIN Certificate, Copy of his National ID and his passport photographs; and transfer to the Plaintiff the whole of the suit land within thirty (30) days from the date of service of the decree of this Honourable Court.

c) In the alternative, if the Defendant declines and or delays inordinately to sign the transfer forms and or provide the transfer documents being the original title deed, KRA PIN Certificate, copy of his National ID and his passport photographs, the Court Administrator Kapsabet Law Courts be authorized to execute the transfer forms in favour of the Plaintiff.

d) Costs of this suit

e) Any other orders that this Honourable Court may deem fit to grant in the interest of justice.

2. Briefly, then plaintiff claimed that he is a bona fide purchaser of the suit land at Kshs 80, 000/= only from Kiptarus Chemwor (Deceased herein) whose estate the defendant is the Legal Representative pursuant to Eldoret

Kadhi's Court Succession Cause No. 44 of 2010. That the suit land is a sub division of the parent land reference number Nandi/Chepkongony/925. That he took vacant possession of the suit land and obtained consent dated 10th May 2007 but it has not been transferred to him. That he has been in occupation of the same since 2007 thus, provoking this suit.

3. The defendant was duly served by way of substituted service via the Star Newspaper by Moses K Rotich learned counsel for the plaintiff under **Order 5 Rule 17 of the Civil Procedure Rules 2010** as disclosed in his affidavit of service sworn on 16th April 2025 herein; see **Ephraim Njugu Njeru vs Justin Bedan Muturi & 2 others (2006) eKLR.**
4. Be that as it may, the defendant opted not to file any statement of defence herein; see **Ogada-vs-Mollin (2009) eKLR.**
5. So, the suit was heard by way of formal proof. In his evidence, the plaintiff (PW1) relied on his statement dated 4th April 2024 as well as his list of documents of even date (P Exhibits 1 to 10) including Final agreement dated 28th

May 2005 (P Exhibit 1), Land Control Board Consent dated 9th May 2007 (P Exhibit 2), and Minutes of Kaptumo Land Control Board consent dated 17th May 2004 (P Exhibit 4) and chief's letter dated 24th October 2016 (P Exhibit 7). He testified, inter alia;

'.....My name is minute No. 19 of 2007 as per P Exhibit 4. It was approved by the Land Control Board hence, issued with P Exhibit 2.....'

6. **PW2, DAVID KIPTOO ROTICH**, the Chief Kaptumo Location, Nandi County confirmed that he prepared P Exhibit which he signed and stamped. Further, he stated that PW1 has been in occupation of the suit land even before 2009 when he (PW2) became chief of the location.
7. In the words of **PW3, MANSUR KIPRONO SEREM**, a farmer and village elder of Bitapkeben village, Kaptumo Location, PW1 owns the suit land which he bought from the deceased. That PW1 has been in possession and occupation of it with a clear fence for more than fifteen years.
8. By the submissions dated 2nd October 2025, learned counsel for the plaintiff did refer to the plaint as well as

the orders sought therein, delineated three issues for determination inclusive of whether the plaintiff has established that he is a bona fide purchaser. Counsel referred to the definition of the term 'Bona fide purchaser' in the **Black's Law Dictionary** and the decision in the case of **Katende-vs-Harider & Company Limited (2008) 2 EA 173** on the description of a bona fide purchaser, among others. That the plaintiff has proven that he purchased the suit land in good faith from the deceased, paid the entire purchase price and gained vacant possession of the same which he has been in use, occupation and possession to-date. That in the interest of justice and fairness, judgment be entered as per the plaint.

9. In the foregone, I endorse the three issues for determination framed in the plaintiff's submissions pertaining to the plaintiff's bona fide purchase for value of the suit land, acquisition of freehold interest in it and entitlement to the orders sought in the plaint.

10. It is was the evidence of PW1 that he bought the suit land from the deceased who took him to the local land

control board and obtained consent thereof. His assertion is demonstrated by P Exhibits 1, 2, 3 and 4.

11. Moreover, PW1 testified that he has been in occupation of the suit land since 28th May 20027. This piece of evidence was affirmed by PW2 and PW3.

12. Evidently, the plaintiff is a bona fide purchase for value in respect of the suit land; see **Katende case (supra)** cited in the case of **Lawrence P. Mukiri Mungai, Attorney of Francis Muroki Mwaura-vs-Attorney General & 4 others (2017) KECA 698 (KLR).**

13. Furthermore, PW1 has acquired freehold interest on the suit land as there is no evidence to the contrary. Article 40 (1) of the Constitution of Kenya 2010 provides for protection of right to property including acquisition and ownership of the same.

14. Clearly, P Exhibits 1, 2 and 3 are valid and enforceable as this court gives effect to equitable principles, in particular, doctrine of constructive trust enshrined under **Article 10 (2) (b) of the Constitution of Kenya 2010** as noted by the Court of Appeal in the

case of **William Kipsoi Sigei-vs-Kipkoech Arusei & another (2019) eKLR.**

15. The defendant did not offer any evidence. However, the plaintiff still bears the burden of proving his case on the balance of probabilities even if the case was heard by way of formal proof only as held by the Court of Appeal in the case of **Kirugi and another-vs-Kabiya and 3 others (1987) KLR 347.**

16. In the instant suit, the plaintiff's claim is unchallenged; see also the decision by Odunga J (now, JA) in **Linus Ng'ang'a Kiongo & 3 others-vs-Town Council of Kikuyu (2012) eKLR.**

17. The plaintiff's case is also cogent and proven against the defendant on the balance of probabilities. Therefore, the plaintiff is entitled to the orders sought at the foot of the plaint.

18. Thus, Judgment is hereby entered for the plaintiff against the defendant for orders sought in the plaint as stated in paragraphs 1 (a) (b) (c) and (d) hereinabove.

19. It is so ordered

DATED and **DELIVERED** at **KAPSABET** this **28th** Day of
October 2025

HON G M A ONGONDO

JUDGE

In the presence; -

1. Mr Bungei Kibet instructed by Rotich learned counsel for
the Plaintiff
2. Walter, Court Assistant