

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT LIKGORIS
ELC (LA) NO. E019 OF 2025

JOSEPH KIPLANGAT MARITIM.....
APPELLANT

VERSUS

ZEDDY CHEPKIEMOI KOECH.....1ST
RESPONDENT

DAVID KIPKOECH CHEPISON.....2ND
RESPONDENT

PAUL CHERUIYOT KOECH.....3RD
RESPONDENT

JUDGMENT

1. Aggrieved by the judgment of Hon. W.C Waswa - SRM Kilgoris delivered in SRM Kilgoris ELC Case E031/2024 ON 4TH April, 2025, the Appellant Joseph Kiplangat Maritim penned 8 grounds of Appeal against the said judgment and sought for the following orders: -
 - (i) The Appellant’s appeal be allowed with costs to the Appellant.
 - (ii) The Hon. Magistrate’s judgment delivered on 4th April, 2025 and orders issued therein be set aside with costs.
 - (iii) That judgment be entered in favour of the Appellant thus; -
 - (a) A declaration that the Appellant is the sole, absolute and exclusive owner and/or proprietor of the suit land herein otherwise known as L.R NO. Transmara/Kimintet B/1190, measuring approximately 7.98 Hectares and as such, the Respondents and/or their agents/servants are wrongfully in occupation of the suit property and are accordingly trespassers on the same.
 - (b) Eviction order evicting the Respondents, their Agents and/or anybody claiming through them from the suit land.

(c) Permanent injunction restraining the Respondents herein, their Agents and/or servants, either jointly and/or severally from trespassing and/or interfering with the suit land or the plaintiff's activities over the suit land and/or remaining on or continuing in occupation of L.R No. Transmara/Kimintet B/1190 in any manner whatsoever and/or howsoever.

(d) General damages for trespass and mesne profit.

(e) Costs of the suit and interests.

2. The 8 grounds of Appeal penned by the Appellant are as follows: -

- (i) The Learned Trial Magistrate erred in law and fact by failing to cumulatively and/or exhaustively evaluate the entire evidence on record and hence failed to capture and decipher the salient issues and/or features of the suit before him and hence arrived at an erroneous and/or slanted conclusion, contrary to and in contradiction of the evidence adduced.
- (ii) That the Learned Trial Magistrate erred in law and fact, by failing to consider that the Defense testimony and admission of trespass on the Appellant's property.
- (iii) That the Learned Trial Magistrate erred in law and fact by failing to protect the proprietary interest of the Appellant's property when by legitimizing and allowing trespass on the Appellant's property when the same is utterly unlawful.
- (iv) That the Learned Trial Magistrate erred in law and fact by ordering deprivation of the Appellant or a portion of his land measuring 3 acres when there is no evidence of purchase of the same and no claim of purchase was even made by the Respondents. Basically, the Learned Magistrate deprived the Appellant of his land without consideration and without a claim of adverse possession being made which finding is irregular and offensive to the law and a just society.

- (v) That the Learned Trial Magistrate erred in law and fact by declaring a purported agreement not signed by the Appellant as being valid and proceeded to slantedly enforce the same to the detriment of the rights protected in law.
 - (vi) That the Learned Trial Magistrate erred in law by failing to protect the sanity of title registered in the names of the Appellant.
 - (vii) That the Learned Trial Magistrate erred in law by failing to consider and holding that there is no adjudication nexus between the Appellant's property Transmara/Kimintet B/1190 and Transmara/Kimintet B/1189 as both are first registration titles and none is a subdivision of another.
 - (viii) That the Learned Trial Magistrate failed to properly evaluate, appraise and/or analyze the entire evidence on record and thereby failing to decipher the salient features of the Appellant's case and thereby arrived at a conclusion contrary to the weight of the evidence on record.
3. The Appeal was admitted for hearing pursuant to directions issued on 02.07.2025, whereat the same was to be canvassed by way of written submission; and the parties filed their respective submissions.

Appellant's Submissions

- 4. The Appellant framed and submitted on one issue for determination to wit, whether or not there exists a valid agreement for disposition of an interest in land that is enforceable.
- 5. The Appellant submits that he never signed the contract and wonders how the trial court gave credence to the very document.
- 6. The Appellant thus submits that the Agreement was thus not valid; and to buttress the point, the Appellant places reliance on the decision in the case of Waiganjo Wathira & Co. Advocates Vs. Pacis Insurance Co.

Ltd as well as the decision in the case of Lawrence C. Njeru Vs. Danson Buya Mungatana (2019 eKLR).

7. The Appellant further submits that there was no nexus between the Plaintiff's property and the Defendants' property to wit Transmara/Kimintet B/1190 and Transmara/Kimintet B/1189 respectively.
8. The Appellant submits that he proved trespassed as defined under Section 3(1) of the trespass Act.

Respondent's Submission

9. The Respondent submitted generally on the grounds of Appeal and did not frame any specific issues for determination
10. On grounds 4, 5 and 6, the Respondents submits that the Appellant reneged on the Agreement dated 17.04.2010, while all along he had acquiesced to its existence and he did not oppose a burial of the late Samuel Koech a relative of the Respondents who was buried on the disputed parcel.
11. The Respondent placed reliance in the decision in the case of Pius Kimaiyo Langat Vs. Co-operative Bank of Kenya LTD (2017) eKLR; where it was held that ***"it is not the business of the court to rewrite contracts between parties..."***
12. The Respondents urge the court to find that the Agreement was enforceable and uphold the same.
13. On grounds number 2 and 3, the Respondents submits that the 3 acres they occupy were ceded to their father and the Appellant had no proprietary interests in the same.
14. On grounds 1, 7 and 8, the Respondents submit that the Learned Magistrate did not err in law or in fact and made no wrong conclusions but made the correct findings and that it is the Appellant who did not prove that the Agreement dated 17.04.2010 was forged, hence they urge the court to find the Agreement was not forged.

Issues for Determination

15. Having considered the record of Appeal, the rival submissions and taken into account the law the issues for determination are as follows:
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- (i) Whether or not the Appeal is merited and in deciding this issue, the court shall equate look at.
 - (ii) What is the import of the Agreement dated 17.04.2010 and
 - (a) Whether the same was a valid agreement, that conferred rights to the Respondent.
 - (b) Whether the agreement dated 22.12.2023 was equally valid and enforceable?
 - (iii) What orders ought to issue and who bears the costs of this Appeal.

Analysis and Determination

16. In order to determine this Appeal as a first appellate court, the court is required to ***“reconsider the evidence, evaluate it and draw its own conclusion”*** being the duties of a first appellate court as was stated in the case of Selle and Another Vs. Associated Motor Boat Co. Ltd.
17. The gravamen of the Appeal and the suit before the trial court is the Agreement dated 17.04.2010, that the trial court found to be valid and which the Appellant disputes as being a forged document.
18. The said Agreement appears at page 114 of the record of Appeal and it is titled ***“RE: Land dispute between Joseph F. Maritim and Kipkoech A. Ketwony”***
- In its recital the Agreement provides; “The above people had been disputing for a long time concerning a land parcel No. 1190. As a result of that, the two agreed today to settle the dispute. Joseph F.

Maritim agreed to give Kipkoech Ketwony 3 acres and remain with 3¹/₂ acres.

19. A number of witnesses signed the said Agreement, including village committee.
20. The Agreement was signed by Joseph F. Maritim whose ID No. 4742946 was captured and a signature beside the said Agreement. Mr. Kipkoech A. Ketwony whose ID No. 620326 Thumb printed.
21. The said Agreement formed the basis of the Defence and counter-claim by the Respondents.
22. In the Reply to defence and Defence to counter-claim appearing at pages 121-123 of the Record of Appeal the Appellant as defendant in the counter-claim made bare denials in respect of the Agreement as can be gained at paragraph 9 thereof.
23. It was incumbent upon the Appellant as defendant in the counter-claim to plead and particularize the particulars of forgery and/or fraud in respect of this Agreement dated 17.04.2010.
24. In his judgment, the Learned Trial Magistrate considered at paragraph 68-70 and 72-74 of the judgment the import of the Agreement found that the Agreement was valid as it conformed to the requirements of Section 3(3) of the Law of Contract Act, and that the 3 acres had been ceded to the Respondent's father and that the Respondents having not undertaken succession in respect of their father's Estate, they could not enter into the Agreement dated 22.12.2023, hence the same was invalid for lack of capacity and thus unenforceable.
25. I find no fault in the findings of the Learned Magistrate in respect to the validity of the Agreement dated 17.04.2010, and the invalidity of Agreement dated 22.12.2023.
26. Having found that the Agreement dated 17.04.2010 was valid the question arising is what then is its import?

27. The Agreement dated 17.04.2010 is certainly neither an Agreement for sale nor a lease agreement.
28. Whereas the same has the effect of a gift, having been made pursuant to a dispute resolution, it is actually a settlement agreement pursuant to traditional dispute resolution mechanism, noting the involvement of the village elders committee.
29. Section 20 of the Environment and Land Court Act empowers the court to adopt and implement such agreements, made pursuant to conciliation, mediation or traditional dispute resolution mechanism under Article 159(2) (c) of the Constitution.
30. The Agreement dated 17.04.2010 formed the basis of the defence and counter-claim, as the Appellant's claim of trespass by the Respondents on the suit property, could not stand in view of the said Agreement that gave the Respondent's father the said 3 acres and by extension the 1st Respondent by virtue of being an administrator of the Estate of Kipkoech Arap Kapketuwony, could validity lay a claim to the 3 acres thereof.
31. In view of the above findings the Appellant's claim of Trespass as plaintiff before the trial court could not stand and the Learned Trial Magistrate was right in dismissing the same.
32. The court thus recognizes and adopts the Agreement dated 17.04.2010 as a settlement of the dispute in relation to the plaintiff and the Estate of Kipkoech Arap Kapketuwony through the Traditional dispute resolution mechanism, also known as Alternative Justice System.
33. In answer to issue number 1, the court finds that the Appeal is not merited in view of the validity of the Agreement dated 17.04.2010 and invalidity and/or unenforceable of the Agreement dated 22.12.2023.

34. In view of the fact that the Appellant and Respondent are neighbours, there shall be no orders as to costs in this Appeal and in the suit before the trial court as each party shall bear its own costs.
35. The upshot is that the Appeal herein is dismissed and the decision of Hon. W.C Waswa dated and delivered on 4th April 2025 is hereby affirmed, save for the order on costs, which is substituted hereof by an order that each party shall bear its own costs.
36. Judgment accordingly.

Dated at Kilgoris this 23rd day of October, 2025.

Hon. M.N Mwanyale
Judge

In the presence of

CA - Emmanuel/Sylvia/Sandra

Mr. Kiprotich h/b for Mr. Shira for Appellant

Ms. Kithinji for the Respondent