



Truser & 9 others v Attorney General & 2 others (Environment and Land Appeal E018 of 2024) [2025] KEELC 7323 (KLR) (21 October 2025) (Judgment)

Neutral citation: [2025] KEELC 7323 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ITEN
ENVIRONMENT AND LAND APPEAL E018 OF 2024
L WAITHAKA, J
OCTOBER 21, 2025**

BETWEEN

**WILSON KIPROP TRUSER 1ST APPELLANT
JONATHAN KIPKURGAT LIMO 2ND APPELLANT
DAVID KIGEN 3RD APPELLANT
JOHN KIPLAGAT SAWE 4TH APPELLANT
KIPTANUI CHEMWENO 5TH APPELLANT
JONATHAN CHEMWENO 6TH APPELLANT
JOHNSON AYABEI 7TH APPELLANT
BARMASAI SAWE 8TH APPELLANT
GABRIEL MAMET 9TH APPELLANT
WILSON KIPROP CHEMNJOR 10TH APPELLANT**

AND

**THE HONOURABLE ATTORNEY GENERAL 1ST RESPONDENT
LAND REGISTRAR, ELGEYO MARAKWET COUNTY 2ND RESPONDENT
THE COUNTY LAND ADJUDICATION OFFICER, ELGEYO MARAKWET
COUNTY 3RD RESPONDENT**

*(Being an appeal from the judgement of Hon. V Karanja PM
delivered on 25th November, 2024 in Iten ELC No. 25 of 2020)*



JUDGMENT

Introduction

1. By a plaint dated 3rd September, 2020 the plaintiffs, now appellants, instituted a suit in the lower court to wit Iten ELC Suit No. 25 of 2020 seeking judgment against the defendants, now respondents for: -
 - a. An order compelling the Land Registrar Elgeyo Marakwet County to issue them with title deeds for land parcels 51, 98, 99, 100, 101, 102, 103 and 272;
 - b. A permanent injunction restraining the 3rd defendant from undertaking any adjudication process with respect to land parcels 51, 98, 99, 100, 101, 102, 103 and 272;
 - c. Costs of the suit.
2. As can be discerned from the averments in the plaint, the appellants suit was premised on the grounds that at all times relevant to the suit, the appellants were the owners and occupants of land parcels numbers 51, 98, 99, 100, 101, 102, 103 and 272 (hereinafter referred to as the suit properties); that on 12th June 2001, the 3rd defendant issued a notice of completion of the adjudication register upon which they (the appellants) were duly entered in the adjudication register as follows: -Wilson Kiprof Tuiser and jonathan Kipkurgat Limo-land parcel number 51;Joseph Kigen sawe-Land parcel number 98;John Kiplagat Sawe-Land parcel number 99;Kiptanui Chemweno and Jonathan Chemweno-Land parcel number 100;Johnson Ayabei and Wilson Kiprono-Land Parcel number 101;Barmasai Sawe-Land parcel number 102;Gabriel Mamet-Land parcel number 103; andWilson Kiprof Chemnjor-Land Parcel number 272.
3. The appellants lamented that for reasons unknown to them, they were not issued with title deeds for their parcels of land. The appellants blamed the 3rd respondent for swearing a land adjudication committee to adjudicate their parcels of land as falling in Changach Emsea Adjudication Section.
4. The respondents filed a statement of defence dated 18th September 2020, in which they denied the allegations contained in the plaint and explained that the suit properties were erroneously adjudicated as part of Lower Sege Adjudication Section; that upon discovery of the error, the adjudication was cancelled by the Land Adjudication Officer and that the suit properties fall outside the described boundary of the Lower Sege Adjudication Section.
5. The respondents further explained/contended that the cancellation of registration of the suit properties was communicated to the appellants but the appellants insisted on being issued with title deeds for their parcels of land.
6. Maintaining that the suit properties fall outside Lower Sege Adjudication Section, the respondents contended that the suit properties were not available for allocation to the appellants.
7. The appellants pleaded that the appellants never lodged a complaint against the decision of the Land Adjudication Officer or appealed to the Minister as provided for under the [Land Adjudication Act](#).
8. The respondents further contend that the appellants' suit was a non-starter and incompetent because it was filed without the consent of the Land Adjudication Officer, thereby offending the provisions of Section 30 of the [Land Adjudication Act](#).
9. When the case came up for hearing, the appellants basically rehashed their pleaded case and produced the following documents as exhibits: -



- i. Adjudication notice-Pexbt 1;
 - ii. Notice of completion of adjudication dated 12th June 2001 as Pexbt 2;
 - iii. Area map as Pexbt 3;
 - iv. Demand notice as Pexbt 4;
 - v. Copy of register as Pexbt 5;
 - vi. Demand letter as Pexbt 6;
 - vii. Letter to the Chief Land Registrar dated 13th February, 2020 as Pexbt 7;
 - viii. Letter dated 17th February, 2020-demand notice as Pexbt 8;
 - ix. Reply dated 24th February, 2022 as Pexbt 9.
10. The appellants maintained that the suit properties are located in Lower Segoo Adjudication Section and not Emsea Changach Adjudication Section.
 11. The appellants' evidence, particularly the testimony of Luka Limo (P.W.5), shows that there was a dispute that led to stopping of the adjudication in question. P.W.5 could not tell the reason for stopping the exercise.
 12. Although P.W.5 maintained that there was no boundary dispute during the adjudication exercise that forms the subject matter of this suit, in cross examination, he admitted/stated that the disputed lands are not in Segoo.
 13. George Mosire, the Land Adjudication Officer, Elgeyo Marakwet County produced the documents contained in the respondents' list of documents filed on 21st September 2020 as Dexbt 1-12. These are: -
 - i. Copy of notice dated 10th August, 1989;
 - ii. Copy of boundary map of Lower Segoo;
 - iii. Copy of letter dated 30th April, 1996;
 - iv. Copy of letter dated 26th August, 1997;
 - v. Copy of ground visit report;
 - vi. Copy of letter dated 6th January, 2004;
 - vii. Copy of adjudication register for lower segoo;
 - viii. Copy of letter dated 30th May, 2001;
 - ix. Copy of letter dated 12th June, 2001;
 - x. Copy of letter dated 30th May, 1996;
 - xi. Copy of letter dated 28th August, 2020;
 - xii. Copy of committee members' oath for Emsea-Changach Section.



14. Upon considering the case urged by the parties, the learned trial magistrate stated/held: -

“I have carefully considered the evidence adduced by both the plaintiffs, the defendants and their witnesses. I have also considered the filed written submissions and the authorities in support of the respective cases.

The issue for determination is whether or not to order the issuance of title deeds to the plaintiffs.

From the evidence adduced it is not in dispute that the suit parcels (51, 98, 99, 100, 101, 102, 103 and 272) had been demarcated under the Lower Segoo Section when the adjudication process commenced. It was later established that the suit parcels do not fall under Lower Segoo section and cancellation and countersigning of the register was done and hence the reason that prompted the plaintiffs to file the current suit.

It was their contention that other land owners were issued with title deeds and they realized their parcels numbers were forwarded and not their names. The plaintiffs stated that they never filed any objection.

The *Land Adjudication Act* sets several disputes resolution mechanisms....

It was the evidence of the Lands Adjudication Settlement Officer (DW1) that the official description of the parcels falls under Emsea/Chagach Section. That for a title deed to be issued on community land there must be establishment of that section and the relevant procedures to be followed under the *Land Adjudication Act* before issuance of title deed....

The jurisdiction of the Land Adjudication Officer is set out under Section 10 of the *Land Adjudication Act*. The same provides that...

The plaintiff had a right of appeal to the minister under Section 29 of the *Land Adjudication Act*...

From the foregoing I find the plaintiffs have failed to prove their case on a balance of probabilities to warrant the court to grant them the orders sought in the plaint. It is clear that the suit parcels fall under Emsea/Changach Section and not Lower Segoo Section.

The defendants have given a plausible explanation on why they were cancelled from the register, that the surveyors included the suit parcels erroneously and they realized that during the inspection and their explanation is believable. They followed the laid down procedure under the *Land Adjudication Act*.

The upshot of the above is that the plaintiffs’ suit is dismissed with costs to the defendants.”

15. Dissatisfied with the decision of the trial court, the plaintiffs appealed to this court on the grounds that the learned trial magistrate erred by: -

1. Concluding that the land parcels in dispute fall within Changach Adjudication Section without any evidence of establishment under Section 5 of *Land Adjudication Act* despite the fact that the suit parcels fall within Lower Segoo whose adjudication process has been completed and it cannot subsequently be a subject to a process of adjudication because there are no longer any rights and benefits to ascertain and record over the same land;
2. Holding that there was no objection with respect to the suit parcel of land and hence the sections relied upon in the *Land Adjudication Act* are not applicable in the circumstances;



3. Holding that the Lower Sego Adjudication and Settlement Officer ceased to exercise authority over the suit parcels of land as the records were transmitted to the Director of Adjudication accordingly to enable titles to be issued;
 4. Failing to consider that the Land Adjudication and Settlement Officer swore affidavit dated 24th June 2009 in Eldoret High Court Miscellaneous Application No.15 of 2002 where he confirmed that they were within their area of description and therefore there was no boundary dispute;
 5. Failing to take into account that before cancelling the suit parcels of land the District Land Adjudication and Settlement Officer was obliged to issue an amended notice of establishment of adjudication section as advised by Director of Land Adjudication and Settlement office vide a letter dated 30.5.1996;
 6. Failing to take into account that the appellants are the registered owners of all the suit parcels of land which the respective ownership and validity has not been challenged pursuant to Section 26(1) and 80 of the *Land Registration Act* No.3 of 2012 and have not been shown to have been obtained by misrepresentation or corrupt scheme or mistake or omission and therefore had and still have legitimate expectation of ultimately having their ownership of the suit parcels of land crystallized;
 7. Failing to consider that the proposed Changach Adjudication Section and yet it had not been gazette as an adjudication area;
 8. Refusing to find that the evidence on record supported the appellants' case.
 9. Making a decision which is unfair and unjust.
16. The appellants prayed that the appeal be allowed in its entirety and the judgment of the lower court delivered on 25th November, 2024 be set aside with costs.
 17. Pursuant to directions given on 3rd June, 2025 the appeal was disposed of by way of written submissions.

Submissions

Appellant's submissions

18. In their submissions filed on 22nd July, 2025 the appellants submitted that the suit parcels fall within Lower Sego Adjudication Section whose adjudication process had been completed; that no objection and/or appeals were preferred and that there were no disputes concerning the ascertainment of their rights and interests over the suit parcels.
19. Explaining that all they were seeking was enforcement of their right to be issued with title deeds since their neighbours had been issued with title deeds, the appellants faulted the lower court for determining that the suit lands are in Changach adjudication section yet no document was presented before it capable of confirming that fact. According to the appellants, no gazette notice was produced confirming that Changach area had been declared a land adjudication section.
20. It is the appellants' case that the maps produced in evidence, at page 17 of the record of appeal, show that the suit parcels fall within Lower Sego adjudication section.
21. The appellants faulted the lower court for determining that the suit parcels fall within Emsea Changach section without giving any reasons for that determination.



22. Maintaining that the suit parcels are in Lower Segoo Adjudication section whose adjudication had been completed and their names forwarded for titling, the appellants submitted that they had legitimate expectation that upon successful completion of the adjudication process, they would be issued with title deeds just like their neighbours who had received their title deeds.
23. It is the appellants' case that under Section 26(a) of the *Land Adjudication Act*, if there are no objections, the Adjudication Officer is mandated to finalize the adjudication register subject to appeal and then send the register to the Director of Land Adjudication who sends it to the Chief Land Registrar for registration.
24. Asserting that the suit parcels were not subject of any objection proceedings, the appellants submitted that their rights in respect of the suit parcel are legal and procedural.
25. The appellants further submitted that the learned trial magistrate erred when she held that they had a right to appeal to the Minister, under Section 29 of the *Land Adjudication Act* yet there were no objections and/or appeals preferred against their registration as the prospective owners of the suit parcels.
26. According to the appellants, their case was not a case for ascertainment of rights to the suit parcels, which rights had already been ascertained, but a case to compel the Land Registrar Elgeyo Marakwet to issue them with title deeds for their respective parcels of land and to restrain the respondents from subjecting the suit parcels to further adjudication.
27. The appellants faulted the Land Adjudication and Settlement Officer for purporting to amend the published gazette notice declaring Lower Segoo an adjudication section.
28. Terming the actions of the Land Adjudication Officer that led to cancellation of registration of their parcels null and void, the appellants submitted that their rights in respect of the suit parcels crystallized to rights capable of being protected under Article 40 of *the Constitution* of Kenya.
29. The respondents did not file submissions and if they did, the submissions were not placed in the court file.

Analysis and determination

30. In exercise of the duty vested in this court as a first appellate court, I have re-evaluated 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)EA 123 and *Mwanasokoni vs. Kenya Bus Service Ltd* (1982-88)1 KAR and *Kiruga vs. Kiruga & Another* (1988)KLR 348.
31. I have read and considered the case urged by the appellants in the lower court, the evidence adduced in support thereof, the submissions and the decision of the lower court appealed from. I have also read and considered the grounds of appeal taken up by the appellants and the submissions by the appellants.
32. The sole issue for this court's determination is whether the appellants have made up a case for interfering with the decision of the lower court. Concerning that issue, as pointed out herein above, the appellants instituted the suit in the lower court seeking to compel the respondents to issue them with title deeds for their respective parcels and to stop the respondents from subjecting their land parcels to fresh adjudication.



33. The evidence adduced in the lower court and which evidence the appellants have acknowledged in their submissions before this court, shows that the registration effected in respect of the suit parcels was cancelled by the Land Adjudication Officer on the ground that the parcels fall outside Lower Segoo Land Adjudication Section.
34. In their submissions concerning the process that leads to registration and issuance of titles, the appellants have submitted that under Section 26(a) of the *Land Adjudication Act*, if there are no objections, the adjudication officer is mandated to finalize the adjudication register subject to appeal and then send the register to the director of land adjudication who sends it to the Chief Land Registrar for registration.
35. Whilst it is factually correct to say that there were no objections in respect of the suit parcels, it is also not in dispute that the registration of the suit parcels was cancelled by the Land Adjudication Officer on the ground that the suit parcels do not fall under the declared adjudication section, Lower Segoo.
36. Whereas there are issues concerning the propriety or otherwise of the action of the Land Adjudication Officer namely cancellation of the registration of the suit parcels, that action brings into question whether the argument by the appellants that they are the registered owners of the suit parcels is factually correct.
37. My considered view of the evidence adduced before the lower court is that the registration effected in favour of the appellants was cancelled. The effect of the cancellation was to extinguish any registration carried out in respect thereof. It is therefore not factually correct to say that the appellants are the registered owners of the suit parcels of land or otherwise put, the recorded owners of the suit parcels of land.
38. It is the considered view of this court that the only way, the appellants could rely on the cancelled registration to found a cause of action for the purpose of been granted the orders sought, is if they moved the court for an order quashing and/or setting aside the impugned decision of the Land Adjudication Officer on the reasons advanced in this appeal.
39. In the absence of any order setting aside the impugned decision of the Land Adjudication Officer; the cancellation of registration of the suit property, the lower court could not grant the appellants the orders sought as it is not factually correct to say that the suit parcels were recorded in the names the appellants and the names of the appellants forwarded to the Chief Land Registrar for processing of titles in their favour.
40. The correct position is that the appellants were recorded as owners of the suit parcels but the recording was later cancelled on the grounds that they fall within a different land adjudication section.
41. As to whether or not the trial court erred by determining that the suit parcels fall in a different adjudication section, upon review of the evidence, I do find as a fact that there was a boundary dispute. As to whether the boundary dispute was resolved and what became of it, I find the evidence adduced insufficient for purposes of making any determination on that issue. Be that as it may, it is the view of this court that whether or not the trial court determined that the suit parcels are in Lower Segoo Adjudication Section, such determination would nevertheless not avail the appellants the orders sought in their suit as the parcels need to be subjected to the applicable adjudication processes before the appellants can be issued with title deeds in respect thereof.
42. Simply put, the appellants did not move the court for appropriate reliefs in the circumstances, which reliefs should have included an order of Certiorari quashing the decision of the Land Adjudication Officer cancelling the registration of the suit parcels and/or an order setting aside the decision of the



Land Adjudication Officer cancelling the registration of the suit parcels; an order compelling the Land Adjudication Officer to transmit the adjudication register for the suit parcels to the director for Land adjudication for onward transmission to the Chief Land Registrar and an order compelling/directing the Chief Land Registrar to issue them with title deeds.

43. In the absence of any order reversing and/or setting aside the decision of the Land Adjudication Officer cancelling registration of the suit parcels, the orders sought by the appellants could not be issued in their favour.
44. The upshot of the foregoing is that the appeal is ill-advised and is lacking in merits. Consequently, I dismiss it with costs to the respondents.

DATED, SIGNED AND DELIVERED VIRTUALLY AT ITEN THIS 21ST DAY OF OCTOBER, 2025

L. N. WAITHAKA

JUDGE

Judgment delivered virtually in the absence of the parties.

Court Assistant: Brian

