

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

ELC NO. E041 OF 2024

SOLOMON KIPLAGAT CHESANG

(Suing as the Personal Representative of the Estate of
CHESANG SUTER

(DECEASED)-----PLAINTIFF

VERSUS

MAGDALENA JEPCHUMBA CHESANG-----
DEFENDANT

JUDGMENT

1. The plaintiff approached this court through a plaint dated **19/11/2024**. As the personal representative of the estate of the late Chesang Suter, he seeks:
 - (a) **Declaration Order that the parcel No. Trans Nzoia/Suwekwa/1316 forms part of the estate of the deceased (hereinafter the suit land).**
 - (b) **Declaration that the registration of the suit land in favour of the defendant was against the decree in Kitale Magistrates Court Land Case No. 38 of 2004.**
 - (c) **Cancellation by way of rectification of the register and the registration for the land to revert to the estate of the deceased.**
2. The plaintiff contends that the deceased was the registered owner of Title No. **Trans Nzoia/Suwerwa/156**, which, following proceedings

in Cherangani Division Land Disputes Tribunal, was subdivided into four portions, one of which the defendant was entitled to work on, measuring 16 acres or thereabout. The plaintiff avers that following the proceedings in the aforesaid Land Disputes Tribunal, the award was read and adopted as a decree of the court on **3/1/2005**, in **Kitale Magistrates Land Case No. 38 of 2004**, which the plaintiff appealed against in **Kitale HC JR Misc. No. 31 of 2005**, whose outcome was that the defendant was only entitled to occupy and work on **16 acres** and not to acquire any title to the portion.

- 3.** The plaintiff avers that while aware that the deceased had passed on, on **1/12/2012**, the defendant, by an application dated **18/1/2016**, sought an order which was granted on **21/3/2016** for the Executive Officer to execute the Land Control Board and transfer in her favour to allegedly implement the decree in **Kitale Magistrates Land Case No. 38 of 2004**, whereby she became the registered owner of the suit land.
- 4.** The plaintiff avers that the said order was set aside and or reviewed by a ruling dated **10/8/2018**; hence making the title held by the defendant unsustainable, illegal since it was obtained while the registered

owner was dead, was not only irregular but also done without involving the legal representative of the estate.

5. Further, the plaintiff avers that in **Kitale ELC No. 40 of 2017**, the court held that the defendant was one of the widows of the deceased, was only allowed to use and occupy the land, and not to transfer it to her name.
6. The defendant opposed the suit through a statement of defence dated **16/12/2024**. The defendant averred that through a chief's letter dated **3/7/2015** and her own letter dated **20/7/2015**, processing of her title for the suit land was expressed to the Trans Nzoia Land Registrar, measuring **6.475 Ha**, as the best way for resolving the existing dispute.
7. The defendant avers that pursuant to the chief's letter confirming the family members and for the lifting of the caution, her title deed was processed and issued on **15/8/2017**, as one among other plot holders, who were to process and collect title deeds in respect to parcel Nos. **Trans Nzoia/Suwerwa/1313, 1314, 1315, and 1316**, according to the area chief's letter.
8. The defendant avers that vide judgment in **Kitale ELC No. 40 of 2017**, dated **24/6/2021**, she was

decreed as the owner of the suit land, following upholding of the decree in **Kitale CMC No. 38 of 2004** and the registration of mutation dated **20/5/2013**, the after which the County Surveyor was ordered to revisit the land re-establish boundaries on the ground as per the mutation form which was undertaken by a letter dated **8/3/2024** copies to all the parties and thereafter as ordered she took vacant possession after the re-establishment of the boundaries.

- 9.** The defendant avers that the plaintiff and her allies attacked her and the team of surveyors, destroyed her car, and caused her bodily injuries in an attempt to deny her access to occupy, possess, use, or utilize the suit land.
- 10.** Again, the defendant avers that the issuance of the title to the suit land, in line with the judgment and decree of the court, which the plaintiff and other relatives, despite being public servants, have been trying to frustrate her in its intention, causing her to incur a lot of expenses.
- 11.** The defendant denies the alleged irregularities; otherwise, there was a will of the estate of her late husband, the plaintiff being one of the witnesses. The

defendant terms the suit as lacking merit and being *res judicata*.

- 12.** Through a reply to defence dated **1/7/2025**, the plaintiff reiterated that the decree in the Land Disputes Tribunal did not authorise the defendant to become the registered owner of the suit land. Further, the plaintiff reiterated that the title held by the defendant could not stand following the ruling dated **10/8/2018**.
- 13.** At the trial, **Okwaro Alfred**, on behalf of the Executive Officer of this court, testified as **PW1**. He produced certified proceedings and decrees in **Kitale Chief Magistrates ELC Case No 38 of 2004** and **ELC No. 40 of 2017** as **P. Exhibits. No. (1)** and **(2)**, respectively.
- 14.** **Solomon Kiplagat Chesang** testified as **PW2**. He relied on a witness statement dated **19/11/2024** as his evidence-in-chief. PW2 told the court that in **Kitale HC Succession Cause No 38 of 2016**, he was issued with a grant of letters of administration on **24/10/2024**. Reiterating the contents of the plaint on the history of the dispute right from the Land Disputes Tribunal, award, its adoption, decree, appeal by way of a Judicial Review, the subsequent illegal subdivisions, and issuance of title in favour of

the defendant, the decision in **Kitale ELC No 40 of 2017**.

- 15.** The plaintiff produced the decree issued on **3/1/2023**, as **P. Exhibit. No. (3)**, the ruling in **Kitale HC Misc. Civil Suit No. 31 of 2005** as **P. Exhibit. No. (4)**, ruling delivered on **10/8/2018** as **P. Exhibit. No. (5)**, an order issued on **21/3/2016** as **P. Exhibit. No. (6)**, judgment delivered on **24/6/2021** as **P. Exhibit. No. (7)**, an official search certificate for **Trans Nzoia/Suwerwa/1313. 1314, 1315, 1316**, as **P. Exhibit. No. (8)-(12)**, death certificate issued on **1/8/2012** as **P. Exhibit. No. (13)**.
- 16.** Similarly, PW2 relied on letters of grant issued on **24/10/2024** as **P. Exhibit. No. (14)**. PW2 told the court that he was not a party in **Kitale ELC No. 40 of 2017**, where the defendant's counterclaim was also struck out.
- 17.** The plaintiff relies on written submissions dated **18/11/2025**. The plaintiff submits that the defendant in **Kitale ELC No. 40 of 2017** had filed a counterclaim, which was struck out for lack of locus standi as per **P. Exhibit. No. (8)**.
- 18.** The plaintiff submits that the suit is not res judicata since the issue raised in the counterclaim in **Kitale**

ELC No. 40 of 2017 was not heard on the merits but was struck out since Luka Ruto had no letters of administration to challenge the title on behalf of the estate of the deceased. Reliance is placed on **Christopher Kenyariri -vs- Salama Beach [2017] eKLR** and **Kenya Commercial Bank -vs- Muiri Coffee Estate Ltd & Another [2016] eKLR**.

19. Further, the plaintiff submits that in view of **P. Exhibits. No. (4) and (5)**, the title held by the defendant cannot be sustained in law, for it lacks a legal foundation. The plaintiff submits that after the ruling in **2018**, the foundation on which the defendant transferred and got registered as the owner collapsed. Therefore, under **Section 26(1)(b)** of the Land Registration Act, the entries made to the register and the issuance of title on **15/8/2017** should be cancelled, for the title to be registered in the estate of the deceased.

20. The court has carefully gone through the pleadings, evidence tendered, and written submissions. The issues calling for my determination are:

(a) If the suit is res judicata.

(b) If the plaintiff has impeached the title held by the defendant.

(c) If the plaintiff is entitled to the reliefs sought.

- 21.** The crux of the plaintiff's case is that the foundation leading to the issuance of title in favour of the defendant was, following several court interventions, being disturbed and or nullified, hence the title stands impeached under **Section 26(1)(b)** of the Land Registration Act. The plaintiff has tendered exhibits showing that the defendant's title is tainted with illegality for this court to make a finding that the root is fundamentally flawed, to claim protection under the law.
- 22.** In ***Dina Management Ltd -vs- County Government of Mombasa & Others [2023] KESC 30 [KLR]***, the court affirmed the decision of ***Munyu Maina -vs- Hiram Gathiha Maina [2013] eKLR***, that where the registered proprietors root title is under challenge, it is not enough to dangle the instrument of title as proof of ownership, without going beyond the instrument and show that the acquisition was legal, formal and free of any encumbrances including interests which would not be noted in the register.

- 23.** The court observed that where the initial acquisition of title is unlawful, all subsequent transfers, even to innocent purchasers, are void.
- 24.** In **Kemboi -vs- Macharia & 2 Others civil Appeal No. 17 of 2020 [2025] KECA 1665 [KLR] (21st October 2025) (Judgment)**, the court said that a certificate of title cannot cure an unlawful allocation process, and as an end product, where the process of its acquisition is tainted, whether through procedural irregularity, fraud or illegality, then the resultant title is void. The court held that no right can flow from nothing; a nullity at inception remains a nullity, no matter how many hands it passes.
- 25.** In **Sawe & Another -vs- Sawe Civil Appeal No. 39 of 2020 [2025] KECA 1677 [KLR] (21st October 2025) (Judgment)**, the court held that it is a fundamental principle of law that, courts determine cases based on the evidence adduced by the parties, and that a court cannot be left to guess what a litigant means, yet he has the obligation to establish facts by presenting clear and reliable evidence to support their claim.
- 26.** The court said that it has to base its decision on the proven facts and law and not on conjecture or speculation. The court emphasized that evidence

presented in court must meet the standards for clarity, reliability, and admissibility and possess sufficient weight to support a finding of fact. The court held that it was upon the appellant, subject to the rule of pleadings and evidence, to formulate their case and adduce cogent evidence.

27. The plaintiff has produced exhibits to support his case, which the defendant did not challenge on the defence of *res judicata* and lack of merit. When a party fails to attend court or call evidence, their pleadings remain mere statements of fact. See **Linus Nganga Kiongo & Others -vs- Town Council of Kikuyu [2012] eKLR.**
28. The evidence of a party that has not been challenged by the defendant remains uncontroverted. See **Edward Muriga (through Stanley Muriga) -vs- Nathaniel D. Shutter Civil Appeal No. 23 of 1997, Interchemie EA Ltd -vs- Nakuru Veterinary Centre Ltd [2001] eKLR** and **Jamlik Muchangi Miano -vs- Attorney General & Others [2017] KEHC 8422 I [KLR].**
29. That does not, however, absolve the plaintiff from discharging the burden of proof that it is probable than not that the allegation contained in the plaint occurred. See **Palace Investments Ltd -vs-**

Geoffrey Kariuki Mwenda & Dollar Auctioneers
[2015] KECA 616 [KLR].

30. In **Rosaline Mary Kahumbu -vs- National Bank of Kenya Ltd [2014] eKLR**, the court held that if the party with the *onus* of adducing sufficient evidence fails to satisfy in truth threshold, the matter could stand dismissed on the basis that it was unmeritorious.
31. *Res judicata*, as held in **John Florence Maritime Services Ltd & Another -vs- C.S. Transport & Infrastructure, Petition No. 17 of 2015**, citing with approval **Kenya Commercial Bank -vs- Muiri Coffee Estates Ltd [2016] eKLR**, is a doctrine of substantive law that once legal rights of parties have been judiciously determined, such edict stands as a conclusive statement of those rights.
32. The court said that when the doctrine is raised, the court has to look at the decision claimed to have settled the issues in question, the entire pleadings and record of the previous case, and the instant suit, to ascertain the issues determined in the previous suit and whether there are the same issues in the subsequent case, whether the parties are the same, or are litigating under the same title, and whether

the previous suit was determined by a competent court.

33. The test is based on the five heads as described in **Bernard Mugo Ndegwa -vs- James Nderitu Githae & Others [2010] eKLR:**

- (1) Identification of the issues.*
- (2) Same parties.*
- (3) Sameness of title or claim.*
- (4) Concurrence of jurisdiction.*
- (5) Finality of the previous decisions.*

34. The court has looked at **P. Exhibit. No. (7)**, one of the issues for determination was whether the defendant herein had obtained title No. **Trans Nzoia/Suwerwa/1316** lawfully. Paragraphs **19-20** dwelt on the legality of the title based on the alleged fraud. Paragraphs **23-24** dwelt on the import of the Land Disputes Tribunal award and the implications of nullifying the title's subdivisions and titles to the four co-wives of the deceased, who had not been joined to the suit.

35. The court in paragraph **26** looked at the locus standi of the defendant in that suit, who had no capacity to do so unless the provision of the Law of Succession Act. The court in paragraph **27** found that he could not sustain the counterclaim. It struck it out.

- 36.** As to the issues of whether the subdivision of the suit land was legal, the court held that it was proper in line with the decree in **Kitale CMC Case No. 38 of 2004**. The court proceeded to confirm the legality of the mutation form dated **20/5/2013**. It also declared the defendant as the legal proprietor of the suit land herein, who is entitled to vacant possession.
- 37.** There is no evidence that the judgment dated **24/6/2021** was appealed against or set aside. In **P. Exhibit. No. (5)**, on page **34**, the court had been called upon to revoke the title held by the defendant herein, issued on **15/8/2017**. The trial court declined to determine the issue on page **35** of the ruling in view of **P. Exhibit. No. (7)**,
- 38.** In **P. Exhibit. No. (4)**, the applicant was seeking to quash the Cherangani Land Disputes Tribunal's award adopted in **Kitale SPM Land Case No. 38 of 2004 on 3/1/2005**. Wanjiku Karanja J, as she then was, declined to quash the award or decree.
- 39.** As indicated above, the court where an issue of res judicata is raised has to delve into the previous pleadings or judgment to see whether the aspects of *res judicata* as set out in the **Independent Electoral and Boundaries Commission -vs- Kiai**

& 5 others [2017] KECA 477 (KLR) decision have been met.

40. In **E.T. -vs- Attorney General & another [2012] KEHC 5506 (KLR)**, it was held that the court must always be vigilant to guard against a litigant evading the doctrine by introducing new causes of action to seek the same remedy before the court. The test here is whether the plaintiff in this suit is trying to bring before the court in a different way, and in the form of a new cause of action, which has been resolved by a court of competent jurisdiction.
41. In **Omondi -vs- National Bank of Kenya & Others [2001] EA 177**, the court held that parties cannot evade the doctrine by merely adding other parties or causes of action in a subsequent suit. To allow such action, there will be no end to litigation, and as held in Kuloba J in **Njangu -vs- Wambugu & Another, Nairobi HCCC No. 234 of 1991**, a party will simply give his case a new cosmetic facelift every time he comes to court.
42. A party should not be vexed twice over the same cause of action as held in **Kuria & Another -vs- Attorney General & Others [2005] E 1 EA 82**.

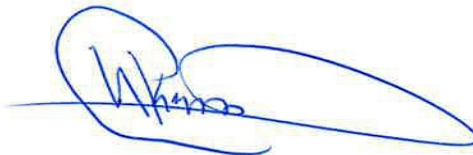
- 43.** Further, a court should not be called again to re-determine an issue between the same parties over the same title and subject matter.
- 44.** Decisions of competent courts on merits and made with finality must be accepted as final and can only be open for challenge either on appeal or under review.
- 45.** It is in the public interest that there be an end to litigation where a decision is a liability to one party who must accept to move on as a plus to the other who is entitled to enjoy the fruits of his litigation.
- 46.** Courts' limited resources should not be misused by parties who seek a second bite of the cherry, tying a second chance to get a totally different outcome than what had been previously issued to them. See **Henderson -vs- Henderson [1843] 3 Hare 100.**
- 47.** Looking at the instant suit *vis-à-vis* the previous decision in **P. Exhibit. No. (7)**, the issue, subject matter, subject title, and parties are similar. The only difference is that the plaintiff herein says that the defendant in the former suit, whose counterclaim was struck out, had no capacity to represent the estate, but he has a grant to do so.

- 48.** Unfortunately for the plaintiff, the issues were dwelt on merits and to finality by a court competent to do so.
- 49.** The upshot is that I find the suit *res judicata*. It is dismissed with no orders as to costs.
- 50.** Orders accordingly.

Judgment dated, signed, and delivered via **Microsoft Teams/Open Court** at **Kitale** on this **10th day of December 2025.**

In the presence of:

Court Assistant - Dennis
Kiarie for the plaintiff - present
Cheptarus for the defendant - present



**HON. C.K. NZILI
JUDGE, ELC KITALE.**