

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT ELDORET

ELC NO. 139 OF 2015

**JOEL KISORO SANG (Suing as shareholder director and member of
CHEMALAL (TWO) FARM COMPANY LIMITED PLAINTIFF**

VERSUS

**PHYLIS CHEPKOECH KEINO
DEFENDANT**

JUDGMENT

Introduction

1. The Plaintiff through a plaint dated 2nd December 2009 and later amended on 29th March 2018 brings this action on his own behalf as a director and shareholder/ member and on behalf of Chemalal (Two) Farm Company Limited (hereinafter '*the Company*').
2. The Plaintiff asserts that the Company is the registered proprietor of land parcels known as LR. No. 5376/2, 5376/4, 5377/4 and 110393/3 located at Kamagut which in total measure approximately 1051.96 Hectares (2,600 acres) (hereinafter referred to as the 'suit properties) and has been processing title deeds for its shareholders.
3. The Plaintiff further claims that the Defendant, who served as the Company's Secretary, acted in breach of trust and her fiduciary duty by fraudulently procuring a deed plan number 240855.

4. The Plaintiff contends that this deed plan was engineered to merge the Company's land with LR No. 5376/3, a parcel owned by Leseru Farm.
5. In the Plaintiff's view, this act was not a clerical misstep but a deliberate intrusion upon the Company's property.
6. The Plaintiff also avers that the Defendant went further and sought consent to transfer both the Company's land and the land belonging to Leseru Farm to an entity described as Chemalal Farmers.
7. According to the Plaintiff, this was not an administrative step but a calculated move that sought to place the Company's property in the hands of strangers without authority, consultation, or lawful basis. To the Plaintiff, the act reflects a conscious design to divert land held for the members of the Company.
8. The Plaintiff alleges that the Defendant, in the position of Company Secretary, exploited her office to divert the Company's property for purposes alien to its interests. She is said to have applied for consent to transfer the Company's land to Chemalal Farmers, acted without the authority of the shareholders or directors in merging the Company's land with that of Leseru Farm, and used her position to orchestrate the fraudulent acquisition of property.
9. Further, the defendant is alleged to have tampered with the original register of shareholders and altered the sub-divisional consent granted to the Company by the Land Control Board. Each act, the

Plaintiff contends, was deliberate, unauthorized, and designed to undermine the Company's lawful ownership and the rights of its members.

10. Ultimately, the Plaintiff prays that the Court declare the Defendant's actions and dealings with the Company's land unlawful, and that the consent letter and deed plan procured by the Defendant be set aside as null and void. The Plaintiff further seeks an injunction restraining the Defendant, whether personally or through her servants or agents, from selling, transferring, or otherwise dealing with the suit property, together with an order for the costs of the suit.
11. The Defendant, through her amended Statement of Defence dated 22nd January 2010 and amended on 3rd October 2018 denied the Plaintiff's averments set out in the Amended Plaintiff and seeks the dismissal of suit with costs.
12. The Defendant admits that she was one of the principal officers of the Company but denies that the suit parcels belong to the Company, asserting instead that they are the property of Chemalal Farm Limited, bearing registration number 7/77. She clarifies that Chemalal Farm Limited is a distinct and separate entity from the Company, which is registered under number C.57096.
13. The Defendant denies having applied for or obtained any consent to transfer the Company's land, contending that any such consent was sought and obtained solely by Chemalal Farm Limited, the lawful owner of the suit parcels.

14. The Defendant expressly denies all allegations of fraud, abuse of office, or any improper conduct. She further asserts that the Company never owned any of the suit parcels, which belong solely to Chemalal Farm Limited.
15. It is the Defendant's contention that the Company does not own any of the suit parcels and she asserts that there is no locus to institute the suit.

Plaintiff's Case

16. PW1, Joel Kisoro Sang, adopted his witness statement dated 28th September 2018 as his evidence in chief and produced his list of documents as exhibits marked as PEX 1-40, and PMFI 36, 38, and 41. He stated that he is a member, shareholder and director of the Company. He asserted that the Company owned the suit properties which were acquired between 1977 and 1982 by a total of 187 persons who eventually resolved and incorporated the company on 28th December 1993.
17. PW1 testified that the Defendant, through acts he describes as fraudulent and clandestine, sought to create the false appearance that the suit parcels belonged to an entirely different entity. He maintained that these actions were calculated to mislead, to divert attention from the Company's true ownership, and to clothe another party with rights that the law never bestowed upon it.
18. PW1 contended that the Defendant applied for and obtained consent of the Land Control Board LCR No. 12254 seeking to transfer a total

of 2709 acres to the entity known as Chemalal Farmers. He clarified that the application included the suit properties together with land that did not belong to the company known as LR. No. 5376/3 which belonged to Leseru Farm.

19. PW1 testified that the application for consent was only signed by the Defendant. He asserted that a consent letter dated 12th September 2002 had been issued to the entity known as Chemalal Farmers.
20. He testified that the Company sought an internal and amicable resolution, but the Defendant refused to cooperate, leaving the concerns unresolved. He added that a search on Chemalal Farmers produced no record of any such registered entity, a discovery that, in his assessment, deepened his suspicion that the Defendant had engaged in fraudulent dealings and breached the fiduciary obligations of her office.
21. Upon cross-examination, PW1 clarified that he instituted the suit on behalf of the shareholders of the Company. PW1 conceded that Chemalal Farmers Limited was incorporated on 17th February 1977.
22. He stated that there were three (3) directors of the Company namely, Basiliano Kirwa Samoei, Phylis Chepkoech Keino and Joel Kisorio Sang.
23. PW1 admitted that he did not have the title deed to the suit parcels. He reiterated that the suit property was acquired between 1977 and 1982.

24. He stated that he was seeking a declaration that the alleged fraudulent amalgamation of the suit parcels be nullified in its entirety. He further prayed that the consent procured by the Defendant be declared unlawful.
25. David Kiplel Rotich testified as PW2 and adopted his witness statement dated 19th February 2019 as his evidence in chief. PW2 stated that he is a member of Leseru Tebeson Farm which consists of 4 members who reside on the land. PW2 testified that the Defendant had encroached on Leseru Tebeson Farm despite their protests. He testified that the Defendant brought surveyors onto Leseru Tebeson Farm and the members resistance subsequently resulted in a fight breaking out.
26. On cross examination, PW2 conceded that he had not produced any documentary evidence to confirm that he was a member of Tebeson Leseru Farm. He clarified that Tebeson Leseru Farm was not a company and explained that each member has their own land. He told the court that the Defendant obtained a title to Tebeson Leseru Farm, particularly LR No. 5376/3. He stated that LR No. 5376/3 was still in existence and had not been amalgamated with any other parcel.
27. PW2 testified that Leseru Farm borders Chemalal Farm. It was his further testimony that Leseru Farm was purchased in 1974 and Chemalal Farm bought their parcel 10 years later from the same seller. PW2 clarified that he is not a member of the Company.

28. Sarah Jeruiyot Kebenei testified as PW3 and adopted her witness statement dated 19th February 2019 as her evidence in chief. She testified that she has lived on Tebeson Leseru Farm since 1974. She informed the court that the land neighbouring Tebeson Leseru Farm is known as Chemalal Farm and asserted that the two farms have never been amalgamated. She stated that she was aware that the Defendant had intended to merge Tebeson Leseru Farm and the neighbouring land. She stated that the Defendant went to Tebeson Leseru Farm with surveyors and upon inquiry into what they were doing on the land, she was beaten up; an incident she reported to the police.
29. In cross-examination, PW3 clarified that she and her husband, Kiproop Kebenei, purchased a portion of Tebeson Leseru Farm in 1974 from Lewa Downs. She conceded that she did not know Chemalal (Two) Farms Company Limited.
30. PW3 testified that the members of Tebeson Leseru Farm consisted of Kiproop Kebenei, David Rotich, Peter Rotich and Kibutia Misoi. She clarified that her husband, Kiproop Kebenei, is not a member of Chemalal Farm.
31. On the strength of the foregoing evidence, the Plaintiff's closed their case.

Defendant's Case

32. Phylis Chepkoech Keino testified as DW1 and adopted her witness statement dated 25th October 2018 as her evidence in chief. DW1

testified that the suit parcels belong to Chemalal Farm and not the Company.

33. DW1 adopted her list of documents as DEX 1, 2, 3, 4, 5, 6, 8, 9, 10, 11, 12, 13, 14, 15, 16. Document number 7 is not available whereas number 17 is marked as DMFI 17. The rest of DW1's list of documents are similarly marked as exhibits DEX18-33 (a) and (b).
34. DW1 testified that she was only aware of Chemalal Farm Limited and not Chemalal (Two) Farm Limited. It was DW's prayer that the Plaintiff's case be dismissed.
35. On cross examination, DW1 reiterated that she did not know of Chemalal (Two) Farm Limited but rather, she is a director of Chemalal Farm Limited together with Basilliamo Samoei and Simeon Maritim. She confirmed that Chemalal Farm Limited does not appear in the letter of consent dated 15th April 1982. DW1 testified that Leseru Farm is part of Chemalal Farm. DW1 admitted that she together with the owner of Lewa Downs Limited sent the application for consent dated 12th September 2002.
36. DW1 explained that a portion of Chemalal Farm was acquired through compulsory acquisition which necessitated the second application for consent.
37. In re-examination, DW1 stated that Chemalal Farmers is the same as Chemalal Farm. She testified that parcel no. 5376/5 is part of Chemalal Farm. It was her testimony that amalgamation of the suit parcels was carried out by Lewa Downs Limited. He stated that they

purchased part of the suit land from Lewa Downs Limited and the other portion was purchased from the Army Barracks.

38. Simeon Kipkosgei Maritim testified as DW2 and adopted his witness statement dated 4th December 2018 as his evidence in chief. He testified that he together with James Kirwa Murei, Christopher Kemeli Samoei, Phylis Chepkoech Keino, Elisha Murei and Esther Odero purchased the suit properties measuring 2600 acres in 1977. He stated that there were other members of the group that purchased the land but he could not recall their names.
39. DW2 testified that Chemalal Farm and Leseru Farm were amalgamated by the Government of Kenya. He told the court that he did not know the Plaintiff but he was aware that the Plaintiff's father bought a portion of Chemalal Farm. He prayed that the suit be dismissed.
40. On cross-examination DW2 reiterated that Leseru Farm and Chemalal Farm were amalgamated by the Government of Kenya. He testified that he and the Plaintiff were employed by Chemalal Farm to assist the surveyors.
41. In re-examination, he stated that there was no dispute during the amalgamation of the land.
42. Basiliano Kirwa Samoei testified as DW3 and adopted his witness statement dated 25th October 2018 as his evidence in chief. He testified that he was one of the directors of the Company and that

he was aware of the amalgamation of Chemalal Farm and Leseru Farm.

43. DW3 told the court that the original land parcel nos 5376/2 and 5376/4 which initially belonged to Chemalal Farm were merged with land parcel no. 5376/3 and given the new land parcel no. 5376/5. He confirmed that the amalgamation was authorized by the owner of Lewa Downs Limited. He stated that the Plaintiff was a son of one of the deceased members of Chemalal Farm.
44. On cross-examination, DW3 confirmed that Chemalal Farm was acquired by the trustees namely, James Murei, Christopher Samoei, Phylis Keino, Elisha Murei and 3 others. He stated that when Chemalal Farm was acquired, it was registered as Chemalal Farm not Chemalal Company Limited. He testified that Chemalal Farm was initially owned by Lewa Downs Limited who initiated the amalgamation of the parcels of the farm.
45. DW3 conceded that in his evidence in chief, he stated that the amalgamation process was done by the surveyors. He stated that the Plaintiff was not a member of Chemalal Farm. It was his testimony that both he and the Plaintiff are children of members of Chemalal Farm.
46. In re-examination, DW3 stated that PEX 6 dated 6th April 1992 does not state that the Plaintiff is a member of Chemalal Farm. He stated that Lewa Downs only got involved in the amalgamation process to ensure that the deed plan was obtained.

47. DW4, Samuel Kibutia Misoi (deceased), passed away before testifying in person. His witness statement dated 4th December 2018 was admitted as his evidence in chief under section 33 of the Evidence Act.
48. Having presented the above evidence, the Defendant closed their case.
49. At the close of the hearing, the Court invited each party to file their written submissions and both parties complied.

Issues for Determination

50. Having weighed the parties pleadings, examined the evidence tendered at the hearing and the written submissions placed on record the following issues emerge for determination:

- i. Whether Chemalal (Two) Farm Company Limited is the owner of the suit parcels;**
- ii. Whether the Defendant engaged in any fraudulent or unauthorised acts in relation to the suit parcels, including the alleged amalgamation and the procurement of consent of the Land Control Board;**
- iii. Whether the Plaintiff is entitled to the declaratory and injunctive reliefs sought.**

Analysis and Determination

51. The first issue for determination is the question of ownership of the suit properties. The Court must examine whether the land in dispute

belongs to the Company, (Chemalal Two Farm Limited,) as asserted by the Plaintiff, or to Chemalal Farm Limited, as maintained by the Defendant. This determination lies at the heart of the dispute, for it frames both the question of *locus standi* and the validity of any acts allegedly undertaken by the Defendant.

52. Learned counsel for the Defendant contends that the Plaintiff has failed to produce any evidence that establishes the Company's ownership of the suit parcels. Essentially, this strikes at the very foundation of the Plaintiff's claim, for without proof of proprietary interest, the Plaintiff lacks the necessary *locus standi* to maintain the suit.
53. It is trite that without establishing locus standi, a party lacks the legal capacity to institute proceedings in respect of the subject matter.
54. *Locus standi* is defined by the Black's Law Dictionary, 9th Edition at page 1026 as, "the right to bring an action or to be heard in a given forum."
55. This principle underscores that a party must demonstrate a legally cognizable interest in the subject matter of the dispute before seeking the intervention of the Court.
56. In ***Priscilla Jesang Koech v Rebecca Koech & 3 Others [2018]*** eKLR, the Court stated:

“Locus standi is the cornerstone of any case. Before a party files a case, he or she must be certain that they are clothed with the requisite capacity to sue and be sued.”

57. Similarly, in ***BV Law Society of Kenya v Commissioner of Lands & Others***, Nakuru High Court, Civil Case No. 464 of 2000, it was held:

“If a party has no locus standi, then the said party cannot bring a suit to court. The issue of locus standi goes to the root of any suit and the said issue of locus standi is a point of law which is capable of disposing of a matter preliminarily.”

58. These pronouncements underscore that *locus standi* is not a mere technicality but a threshold requirement essential to the Court’s jurisdiction and the justiciability of any claim.
59. In disputes over private land, ownership or a lawful right is the threshold without which no claim can take root, and the Court cannot lend its authority to assertions unsupported by evidence of such interest.
60. This principle finds clear expression in Sections 24, 25, and 26 of the Land Registration Act, which affirm that legal ownership is the foundation upon which the right to sue rests. Absent proof of such ownership, a claim over the land cannot stand, and the Court is bound to deny intervention to those who would assert rights they do not lawfully hold.

61. Under **Section 24** of the Land Registration Act, registration vests in the proprietor either absolute ownership of the land or, in the case of a lease, the leasehold interest described therein, together with all rights, privileges, and appurtenances appurtenant thereto, subject to any expressed or implied obligations under the lease.
62. **Section 25** protects a registered proprietor's rights, whether acquired at first registration, subsequently for valuable consideration, or by court order, against defeat except as expressly provided by law, while remaining subject to any duties as a trustee and to registered encumbrances or recognized interests.
63. **Section 26** establishes that the certificate of title issued by the Registrar constitutes *prima facie* evidence of absolute and indefeasible ownership, enforceable in all courts, and may only be challenged on grounds of fraud, misrepresentation, or illegal acquisition, with certified copies of registered instruments being admissible as evidence in the same manner as originals.
64. Together, these provisions enshrine both the security of ownership and the legal foundation upon which a proprietor may assert rights and seek the protection of the Court.
65. In any dispute over private land, a party seeking the Court's protection must demonstrate a legally recognized interest in the property. The most compelling evidence of such an interest is the certificate of title, which under **Section 26(1)** of the Land

Registration Act is treated by the courts as prima facie proof that the person named therein is the rightful and indefeasible owner.

66. In paragraph 4 of the Amended Complaint, the Plaintiff asserts that, "The Company is the sole owner of the land parcels known as LR no. 5376/2, 5376/4, 5377/4 and 110393/3 located at Kamagut which in total measure approximately 1051.96 Hectares (2,600 acres) and has been processing title deeds for its shareholders."
67. Moreover, the Plaintiff has produced a comprehensive list of documents admitted as evidence to support his case. These documents, while numerous, must be evaluated not merely for their form or quantity, but for their ability to establish the core legal requirement of ownership and a legally cognizable interest in the suit parcels.
68. An examination of the Plaintiff's evidence reveals a conspicuous absence of proof that the Company has any title or recognized interest in the suit parcels.
69. No title document has been tendered as evidence to establish ownership of any of the suit parcels.
70. Learned counsel for the Defendant submits that there is no cause of action between the Plaintiff and the Defendant.
71. It is trite law that he who alleges must prove. The law imposes the burden of proof on the party asserting a fact.

72. Sections 107, 108, and 109 of the Evidence Act provide as follows:

“107.(1)Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.

(2)When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person.

108. The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.

109. The burden of proof as to any particular fact lies on the person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.”

73. Building on the established principles, the Court observes that ownership is the *sine qua non* of any claim to private land.

74. Sections 24, 25, and 26 of the Land Registration Act confer on a registered proprietor the full bundle of rights and privileges appurtenant to the land, and the certificate of title serves as prima facie evidence of such ownership.

75. In this matter, the Plaintiff has tendered no title document or credible evidence to show that the Company holds any interest in the suit parcels.

76. Coupled with the settled law that he who alleges must prove, it is clear that the Plaintiff has failed to discharge the burden of establishing ownership. Without such proof, the claim lacks a

foundational legal basis, and the Court cannot lend its authority to a case where the essential element of proprietorship remains unproven.

77. It is an immutable principle that only a person vested with ownership or a legally recognized right may invoke the Court's authority over land.

78. As held in **Rogito v Mogaka & another** [2025] KEELC 2948 (KLR) :

"One cannot sue over private land without showing that he owns it or has rights over it. In other words, you cannot casually walk into court and sue persons for land that you cannot prove that you own or have rights over..."

Without proving locus standi, the plaintiff's case has no legs upon which to stand on and it is hereby dismissed with costs to the defendants."

79. In the present case, the Plaintiff has failed to establish that the Company holds any proprietary interest in the suit properties. Without such proof, the Court is barred from entertaining the claim or considering any other issue, for jurisdiction itself is dependent on the threshold requirement of *locus standi*.

80. With respect to the remaining issues, the Court notes that even if the allegations of fraud and unauthorized acts by the Defendant, including the purported amalgamation of the suit parcels and the procurement of consent, were examined, the Plaintiff's failure to

establish ownership or any legal interest in the land precludes a finding against the Defendant.

81. Similarly, entitlement to the declaratory and injunctive reliefs sought is contingent upon a valid underlying claim; absent proof of ownership or any enforceable rights, the Court cannot grant the reliefs, as doing so would confer protection upon a party without a legal stake in the property.

82. It follows, inexorably, that this suit must fail.

83. Accordingly, the Court is constrained to dismiss the suit with costs to the defendant.

Dated, signed and delivered virtually at Thika this 10th day of December 2025.

.....
J. M. ONYANGO
JUDGE

In the presence of:

1. Mr Ogongo for the Defendant
2. No appearance for the Plaintiff

Court Assistant: Hinga