



REPUBLIC OF KENYA



KENYA LAW
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**Lokapel v Lokapel (Environment and Land Case 27 of 2014)
[2026] KEELC 1435 (KLR) (11 March 2026) (Judgment)**

Neutral citation: [2026] KEELC 1435 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KITALE
ENVIRONMENT AND LAND CASE 27 OF 2014**

CK NZILI, J

MARCH 11, 2026

BETWEEN

WILLIAM LOKAPEL PLAINTIFF

AND

VERONICAH LOKAPEL DEFENDANT

JUDGMENT

1. The plaintiff has sued the defendant, who is one of his spouses, for illegally and without justification lodging, registering, and maintaining a caution over his land Title No. West Pokot/Chepkono/157 measuring 11.64 Ha or thereabout. He prays the court to:
 - a. Find the basis for the caution lacking and to order its removal.
 - b. Issue a permanent injunction.
2. The plaintiff contends that he has three wives, the 1st defendant being the first, followed by Chepoka Psokom Lokapel and Chepororkony respectively, whom he has subdivided the suit land together with their children, each with ascertained acreage, and to avoid family squabbles. The plaintiff terms the acts of the defendant as illegal, unjustified, greedy, and out to antagonize the rest of the family members.
3. The defendant opposes the suit through an amended defence and counterclaim dated 4/2/2016. She states that the plaintiff has only two wives and terms the alleged Chepororkony Lokapel as a stranger to them. The defendant terms the alleged subdivision of the suit land as made in bad faith, with an intention of disinheriting her of the land. The defendant avers that the suit land was her share, after a subdivision where the plaintiff was granted 8 acres, hence he is holding the land in trust for her and the children.
4. The defendant avers that the land ought not to be subdivided amongst the plaintiff's second wife and her children, since they already own land at Simotwo known as Title No. West Pokot/Chepkono/370,



- which is under the second wife's occupation. The defendant terms the caution justified, to safeguard her right on the suit land, since the plaintiff was intending to sell the land.
5. By way of a counterclaim, the defendant, as the plaintiff, avers that Chepokapsokom Lokapel, as the second wife, is only entitled to land Title No. West Pokot/Chepkono/370, for she has been a resident thereon with her children, since her marriage to the plaintiff. The defendant avers that Title No. West Pokot/Chepkono/157 should be transferred to her to hold in trust for her children.
 6. The defendant prays for:
 - a. An order that the 2nd house be allocated a share by the plaintiff from the land title number West Pokot/Chepkono/370.
 - (b) She is to transfer 24 acres from Parcel No. West Pokot/Chepkono/157 to hold in trust for her children.
 7. Through an amended reply to the defence and defence to the counterclaim, the plaintiff avers that he is the lawful and legal owner of the suit land and that Chepororkony Lokapel is his third wife with children. The plaintiff avers that Land Title No. West Pokot/Chepkono/370 does not belong to him, but to a brother called Lomutasia Lomaya.
 8. The plaintiff avers that the defendant has a share of land which she was given and can only be transferred to her and not the entire 24 acres; otherwise, to do so would amount to disinheriting other family members. The plaintiff avers that he has no intention of disposing of the land, that he subdivided his land in good faith, for the benefit, peaceful co-existence, and development of his entire family.
 9. At trial, William Lokapel testified as PW1. He relied on a witness statement dated 10/2/2014 as his evidence-in-chief. PW1 told the court that he got married to the defendant as his first wife, but after she became unfaithful, they separated, only for her to come back at his acceptance on humanitarian grounds, following the intervention of elders, relatives, and his brother after she was warned not to repeat her unfaithfulness.
 10. PW1 told the court that recently he summoned all his wives and their children, where he announced his intention to subdivide the suit land measuring approximately 16.64 Ha for the sake of the family peace and stability, who agreed in unison in the presence of his brothers, relatives, clan members, and elders. Following the blessings to do so as per Pokot customs, at the meeting, PW1 told the court that he applied and obtained a Land Control Board Consent for the subdivision, after which he engaged a surveyor.
 11. PW1 said that each of the wives and the family members was given a portion of land as per the plot numbers issued, including the defendant. PW1 said that he was later surprised that the defendant had lodged a caution on the title, alleging that she was protecting her interests as a beneficiary, yet he never left anyone out of the subdivision.
 12. PW1 said that after the defendant started many quarrels or squabbles, his second wife had to relocate and settle on a land belonging to his brother in Simotwo until the children grew up, who have now asked for them to relocate from his land. PW1 said that the meeting and his intention were also communicated to the area chief.
 13. Further, PW1 said that the land title number. West Pokot/Chepkono/370 belongs to his brother as per the official search before the court. PW1 relied on a copy of the mutation as P. Exhibit No. (1), title deed as P. Exhibit No. (2), official search certificate as P. Exhibit No. (3), letter to the Land Registrar to lift the caution dated 3/12/013 as P. Exhibit No. (4).



14. PW1 said that he bought the land after moving the defendant, which became their matrimonial home. PW1 said that after he married his second wife, he brought her to the suit land before the defendant chased her away to go and live in his brother's land in Simotwo. PW1 admitted disposing of 5 acres of the suit land to Samuel Abrunk.
15. PW1 blamed the defendant for infidelity with other men. PW1 said that the caution was registered on 24/5/2013, after he had applied for the Land Control Board Consent as per P. Exhibit No. (1) and (3) on 14/3/2013. PW1 stated that though the third wife lives with her family, he had paid dowry for her and has two children. PW1 said that he had given the defendant and her children 9 acres of land and the second wife 6 acres.
16. This court took the evidence of the rest of the witnesses after directions were given on 27/1/2025, for the matter to proceed from where it had reached before the former court.
17. Everlyne James testified as PW2. She relied on a witness statement dated 10/2/2014 as her evidence-in-chief. PW2 confirmed that the suit land belongs to the plaintiff, which, according to the mutation form and the consent from the Land Control Board, he had agreed to subdivide among his wives and family members following a family meeting in which the defendant was in attendance.
18. PW2 said that the caution was inhibiting her father from affecting the subdivision. PW2 confirmed that the defendant is her mother, who had initially separated from her father, leaving her siblings on the land before the two reconciled, and she came back. PW2 confirmed that her stepmother lives at Simotwo together with her children.
19. Longurasia Lomaya testified as PW3. He relied on a witness statement dated 10/10/2015 as his evidence-in-chief. PW3 confirmed that his brother, the plaintiff, had three wives, among them the defendant and the second wife, who, after she was chased away from the suit land in 2013, he has been accommodating her on his parcel No. 370 in Simotwo.
20. PW3 confirmed that the plaintiff had called a family meeting with a view to subdividing his land among the three wives and their children, after which the land surveyor came to the land to effect the subdivision, after a Land Control Board Consent was issued to the plaintiff, only for the defendant to block the process.
21. PW3 said that the intention was also for the plaintiff to relocate and settle the second wife on the suit land, for his children were entitled to be settled on the land that the second wife of the plaintiff has been occupying for over 30 years. PW3 denied that the land in Simotwo was family land where the plaintiff had a share.
22. PW4 was Simon Lomaya, who relied on a witness statement dated 10/2/2024 as his evidence-in-chief. His evidence was similar to that of PW3.
23. Veronicah Lokapel testified as DW1. She relied on a witness statement dated 4/4/2017 as her evidence-in-chief. DW1 told the court that she married the plaintiff in 1974 under Pokot Customary Law, after which they established a matrimonial home at Chepkono, on the suit land. DW1 said that their marriage was blessed with 7 children. She denied remarrying someone else.
24. DW1 said that before the demise of their father-in-law, he ensured that each of his sons was given a piece of land. In this case, initially, she said that the suit land measuring 29 acres was acquired from the father-in-law, though the plaintiff sold 8 acres of it in 1995 without her knowledge.
25. DW1 said that a report was made to the area D.O by her, whose verdict was that the 8 acres shall be treated as a share of the plaintiff and the rest to be held by her in trust for her children. DW1 said that



- in 1985, the plaintiff married a 2nd wife who he established a matrimonial home at Simotwo, a portion also belonging to her late father-in-law, where she has lived with her husband since 1999.
26. DW1 said that the land in Simotwo is also held in trust for the family by her husband. DW1 said that around 1999, the plaintiff came back to her land with the intention of disposing of it, harassing her using administrative officers, to silence or intimidate her. DW1 said that in the process, PW1 forcefully took away her cattle, which he distributed among her married daughters as an inducement for them to support his ulterior motives of disposing of the land, promising some of them, like PW2, to grant them a portion of her land.
 27. Further, DW1 said that she is the one who has solely been living on the land, which should not be shared out among her co-wives or sold, for she has young children who are entitled to it. DW1 said that as of 1974, she had found the land in existence. DW1 denied attending and conceded to the subdivision in the meeting that deliberated over the sharing of the land.
 28. DW1 denied that the second wife had lived with her on the suit land before relocating to Simotwo. DW1 admitted that she lodged the caution to protect her interests.
 29. DW1 said that she was opposed to the alleged subdivision since she knew who the intended beneficiaries were. DW1 said that she was also opposed to the co-wives and their children benefiting from her land, which exclusively belongs to her house, given that the 2nd house is already settled in the ancestral land belonging to her late father-in-law at Simotwo, which was also bequeathed to her and her husband by the said father-in-law before he passed on. DW1 said that she has been in a bad relationship with the plaintiff for close to twenty years.
 30. Nguriareng Pakaramoi testified as DW2. He relied on a witness statement dated 4/4/2017 as his evidence-in-chief. DW2 confirmed that both the plaintiff and the defendant are his neighbours. DW2 said that the 2nd wife of the plaintiff, under the directions of the late father-in-law, after marriage, was settled in the Simotwo area, where she has been living since, together with her children.
 31. DW2 said that the plaintiff and her, under the Pokot Customary Law, have a right to subdivide his land among his children. DW2 confirmed attending the meeting in 2013, in the presence of the area chief, clan members, the children of the plaintiff, and his brothers, with a view to subdividing his land among the wives and the children.
 32. The plaintiff relies on written submissions dated 26/2/2026 and isolates six issues for this court to determine. The plaintiff submits that the evidence on record shows that he is the indefeasible proprietor of the suit land, and that no documentary proof supports the defendant's assertions of a trust or a beneficial interest. Reliance is placed on Sections 25, 26, and 28 of the *Land Registration Act* and Mwangi Rukwaro & another -vs- Land Registrar, Nyeri [2019] KEELC 3985 (KLR) and Festo -vs- Gidagwa & 2 others [2024] KEELC 568 (KLR).
 33. The plaintiff submits that the defendant has failed to demonstrate sufficient proprietary rights or interests to justify lodging and sustaining the caution, by dint of Section 71 of the *Land Registration Act*. Further reliance is placed on Article 45(3) of *the Constitution*, Sections 5, 8, 9, and 14 of the *Matrimonial Property Act*, Section 32 of the *Law of Succession Act*, SJM -vs- MK [2023] KEHC 24355 (KLR), SNN -vs- CAO [2019] KEHC 11708 (KLR), LMM -vs- MKP [2023] KEHC 1081 (KLR), POM -vs- MNK [2017] eKLR, and Echaria -vs- Echaria [2007] eKLR.
 34. On whether the caution should be lifted, the plaintiff submits that this court has jurisdiction under Sections 73 and 75 of the *Land Registration Act*, to order the removal of an unfounded, vexatious, or lodged without reasonable cause, potentially attracting damages under Section 75 thereof, for



wrongful caution. Reliance is placed on Koech -vs- Sang [2023] KEELC 16664 (KLR), Rarl Limited -vs- Chief Land Registrar & another [2023] KEELC 22034 (KLR), Agata -vs- Land Registrar Narok & another (Environment and Land Miscellaneous Application E00I of 2023) [2024] KEELC 3905 (KLR), Chebon -vs- Land Registrar & another [2023] KEELC 22223 (KLR) and Kimathi -vs- Land Registrar Nyandarua & 2 others (2023) KEELC 17426 (KLR).

35. The plaintiff submits that Section 13 (7)(a) of the *Environment and Land Court Act* empowers this court to grant any relief it deems appropriate, including permanent injunctions, while Order 40 of the Civil Procedure Rules provides for injunctive reliefs, where a legal right is established, irreparable harm is likely, and the balance of convenience favors the applicant. The Defendant's actions of lodging the caution threatening further encroachments and pursuing a baseless counterclaim constitute unlawful interference with the plaintiffs' quiet enjoyment of the suit land.
36. Regarding whether the defendant's counterclaim is merited, the plaintiff submits that the defendant has failed to establish the existence of a trust, and granting the counterclaim would disinherit other family members and violate Article 40 of *the Constitution* on property rights.
37. The defendant, on the other hand, relies on written submissions dated 28/2/2026. She submits that according to Pokot customs, a man with a second wife is obligated to settle her on a different piece of land from the first wife, or give her a portion on the same land. The defendant submits that the plaintiff intended to settle his second wife on the land parcel West Pokot /Chepkono/370, which land they are entitled to, and not any other parcel.
38. The defendant relies on Sections 24, 25, and 93 of the Land Registration Act to submit that the suit land is subject to trust and matrimonial rights and therefore she is entitled to the suit land where she established her home as a spouse of the plaintiff. The defendant further submits that the suit land should be registered in her name, in trust for her children, and disregards the purported subdivision, which was an affront to the law.
39. Regarding the caution, the defendant, relying on Sections 71, 73, and 28 of the *Land Registration Act*, submits that she is entitled to the suit land, which is subject to overriding interests. The defendant also submits that if the caution is lifted, the plaintiff intends to alienate the suit land without any regard to her rights. She relies on Section 12 of the *Matrimonial Property Act* and Simon Kimemia Mut/1011 -vs- Mosel Mugo Mari11ga ELC 358 of 2015 and Joseph Kibowen -vs- C Kisera (Eldoret Misc. Case No. 2 of 2013) and submits that the plaintiff has yet to exhaust the statutory mechanisms under the *Land Registration Act* and that the suit is premature.
40. The defendant submits that in the event that this court issues a permanent injunction, it would amount to evicting her from her matrimonial home.
41. The issues calling for my determination are:
 1. If the plaintiff is entitled to an order for the removal of the caution placed on the title to West Pokot/Chepkono/157.
 2. If the defendant was justified in placing and maintaining a caution on Title No. West Pokot/ Chepkono/157.
 3. If the defendant has proved an overriding trust over the suit land to be entitled to a share.
 4. What is the order as to costs?
42. It is a trite law that a wife holds a spousal interest, as an overriding interest against a title belonging to her husband. Such overriding interest, unlike children's rights, was held in *Toroitich Suter -vs- William*



- Toroitich & Others [2017] eKLR, as vested in either the husband or the wife, as the registered owner. The court said that children and grandchildren of a living title holder have no overriding interest.
43. In Robert Mbui -vs- Kennedy Mwanzia Musembi [2018] eKLR, the court said that a father could deal with his land subject to his wife's consent in any way, since the law does not mandate a father to share his land with his children during his lifetime.
 44. The [Matrimonial Property Act](#) prohibits the disposal of matrimonial property without the spouse's consent. Section 28(a) of the [Land Registration Act](#) recognizes spousal rights over matrimonial property as an overriding interest, meaning that they bind the land even if not shown on the register.
 45. Spousal consent is a condition precedent in the sale of land, transfer of ownership, charging of the land to a bank or lender, leasing or long-term tilling, gifting or settlement, and any other disposition that affects ownership or occupation of land. A spousal consent must be given in writing, signed by the spouse, and witnessed.
 46. The [Land Registration Act](#) Regulations, 2017 require a formal document of a spouse's consent, often through a spouse's consent form, a statutory declaration, or an affidavit of marriage, and identification documents of the spouse. A disposal of land may therefore be challenged in court for lack of a spousal consent.
 47. Section 71 of the [Land Registration Act](#) provides that a person who claims the right, whether contractual or otherwise, to obtain an interest in any land, lease, charge, or capable of a creation by an interest, may lodge a caution with the Registrar forbidding the registration of disposition of the land.
 48. Section 73 of the [Land Registration Act](#) makes provisions for the withdrawal or removal of a caution by either the cautioner, Land Registrar, or through an order of the court upon an application by any person interested, with notice to the cautioner. See Joseph Kibowen -vs- William C. (supra).
 49. Rule 23 of the Land Registration General Regulations 2017 provides for registration of a spousal interest through the inclusion of the name(s) of a spouse in the register under Form LRA 10, upon issuance of a notice to the registered owner under Form No. LRA 11. Entry of the name does not, however, confer ownership status to the spouse.
 50. Rule 80 of the Regulations provides for registration of a caution through Form No. LRA 67. An application for the withdrawal of the same is through Form No. LRA 70. A registrar may conduct a hearing and make appropriate orders under Section 73(4) of the [Land Registration Act](#) on whether or not to lift a caution. He can make an order under Form No. LRA 74.
 51. In Mugambi -vs- Mugambi [2024] KEELC 445, the court cited David Macharia Kinyuru -vs- District Land Registrar, Naivasha & Another [2017] KEELC 2474 [KLR], that it is not the purpose of the law on restriction and caution, for them to endure indefinitely, the reason being that a restriction or caution in law should only hold a property in abeyance, as the underlying issue leading to the restriction or caution is being resolved, since a restriction or caution does not solve a dispute.
 52. The court said that the issue of ownership of land is a matter that squarely falls for determination by the court. The court said that it has powers under Section 78 of the [Land Registration Act](#) to remove and vary restrictions.
 53. In Republic -vs- County Land Registrar, Kisumu, Kenya Industrial Estates (IP) Exparte Cherkwel Properties Ltd [2024] KEELC 1281 [KLR], Okongo J, as he then was, held that a Land Registrar's office is not the best suited to resolve disputes on land ownership, and if there is a caution, either the cautioner or the affected party should file a civil suit before the Environment and Land Court, for the



- determination of the issue with finality. In this suit, the defendant's justification is spousal interest and trust, now breached by the plaintiff.
54. In *Justus -vs- Ntarangwi & another* [2024] KEELC 4787 (KLR), the appellant had complained that the suit land was initially family land held in the name of his mother in trust for himself and her children, who had been in occupation of it, but which was dwelt in with total disregard for the trust.
 55. The court said that, guided by *Isaack Kiebia -vs- Theuri M'Lintari* [2018] KESC 22 [KLR], the applicant has to show that:
 - a. The land in question was, before registration, family, clan, or group land.
 - b. The claimant belongs to such a family, clan, or group.
 - c. The relation of the claimant with the group, clan, or family is not remote.
 - d. The claimant would have been entitled to be registered but for some intervening circumstances.
 - (e) The claimant is directed against the registered proprietor who is a member of the family, clan, or group.
 56. Trust is a matter of fact to be established by leading evidence as held in *Omollo -vs- Oduor* [2022] KECA 371 [KLR]. The facts of the case are to be determined on its own merits, depending on the quality of evidence presented as held in *Kambo -vs- Mwanga* [2022] KECA 54 [KLR].
 57. Family or ancestral roots are crucial in establishing overriding interests based on trust. The plaintiff does not deny the source of the land as arising from his late father. The plaintiff does not deny that the defendant is his first wife, who is in occupation of the suit land. He does not deny that the defendant is both a beneficiary and holds spousal interests. See *Hatayan & Another -vs- Said Saggat Ahmed Al-heidy & Others* [2015] eKLR.
 58. The plaintiff does not deny that, despite spousal differences with the defendant, she remains his spouse, occupying the suit land. There is no evidence that the plaintiff moved the Land Registrar to lift the caution. Equally, there is no evidence that the plaintiff involved the defendant in discussing the subdivision of the land under her occupation with non-members of her family, on account of her spousal interests.
 59. A caveat as held in *Boyes -vs- Gathure* [1969] EA 385, is intended to serve a two-fold purpose. One of them is to give notice of the nature of the claim to the registered owner and the world at large. The plaintiff says the caution was unjustified and has deprived or limited his property rights.
 60. In *JOO -vs- MBO* [2023] KESC 4 [KLR], the court held that the status of the marriage does not solely entitle a spouse to a beneficial interest in the property registered in the name of the other, and that a party must prove contribution to be entitled to distribution. The court underscored that equality in equity is enshrined under Article 45(3) of *the Constitution*, to ensure there is equality and fairness, to both spouses, in ensuring that all parties have the same rights at the dissolution of a marriage, based on their contributions.
 61. In *Mary Nyambura Paul -vs- Paul Ogari Mayaka* Petition No. 9 of 2021, the issue was whether, during the subsistence of marriage, a party can file proceedings for the distribution of property acquired during the subsistence of marriage. The court proceeded to quantify the beneficial interest due to the parties based on their direct financial contribution, while acknowledging the issue of non-financial



- contribution to improve the property, such as actions of the parties in maintaining and improving the property.
62. In Joseph Ombogi Ogentoto -vs- Martha Bosibori Ogentoto [2023] eKLR, the issue was whether Article 45(3) of *the Constitution* automatically requires matrimonial property to be distributed at a 50:50 ratio. The court agreed that equality during and after marriage does not mean the mathematical division of assets acquired into two halves, but that equality and equity would then mean that each party gets a fair share based on their contributions.
 63. This is a unique case where the couple is still married, but the husband wishes to share the land occupied by one of his wives with the other two wives and their children living outside the defendant's matrimonial home. It presents unique issues of overriding interest, customary trust, and spousal interests. The plaintiff has vehemently rebutted the counterclaim saying that parcel No. 370 is not family land and the second wife and her children are on the land of his brother temporarily and a notice has been given to vacate and that the only place to relocate them is by subdividing the land occupied by the defendant as per mutation form and the Land Control Board Consent out of a meeting in 2013, for the sake of family harmony, peace, development and stability.
 64. The plaintiff seeks a permanent injunction. Obviously, the defendant is not a trespasser on the suit land. She has spousal rights or interests in the land.
 65. Article 27 of *the Constitution* espouses the principle of equality. Section 28(h) of the *Land Registration Act* cannot relieve the plaintiff as a proprietor from a duty that he is subject to as a trustee, overriding interests subject to the land. The plaintiff holds a fiduciary relationship.
 66. Article 27 of *the Constitution* detests discrimination on account of land ownership. It is gender neutral. The Article guarantees every person, regardless of gender or marital status, equality before the law and the right to equal protection and benefit of the law. The rights could include the full and equal enjoyment of property rights under Article 40 of *the Constitution*. Article 10 (b) of *the Constitution* provides that justice shall be done to all irrespective of status and gender. See Roche -vs- Roche & Another Civil Appeal No. 177 of 2019 [2025] KECA 1637 [KLR].
 67. The defendant prays in the counterclaim to have the land exclusively transferred to her on behalf of herself and the children, since the plaintiff sold his share. Evidence of that nature is lacking. Contribution of the same in terms of improvement and development exclusively by the defendant is lacking. Evidence that the plaintiff owns Parcel No. 370 has been discounted by the official search certificate and the evidence of his brother.
 68. Doing the best I can in the circumstances, I find that the plaintiff has failed to prove his claim to the required standards. His suit is dismissed.
 69. As to the counterclaim, the defendant has succeeded only in terms of proving spousal or overriding interests. The court directs that her name be included as a co-owner of the suit land in equal shares with the plaintiff. Each party shall bear their own costs.
 70. Orders accordingly.

JUDGMENT DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT KITALE ON THIS 11TH DAY OF MARCH 2026.

HON. C.K. NZILI

JUDGE, ELC KITALE.

In the presence of:



Court Assistant - Dennis

Sugut for Chebet for the defendant present

Mr.Chebii for the plaintiff absent

