



REPUBLIC OF KENYA

IN THE ENVIRONMENT & LAND COURT AT KABARNET

ELC CASE NO. E004 OF 2024

DAVID KIPTARUS KOSGEI 1ST

PLAINTIFF

JOHN KIPKOSGEI KURGAT 2ND

PLAINTIFF

**KIPKORIR KOSGEI (Suing as the legal representative/
Administrator of the estate of
KIPKOSGEI CHEPKURGAT-Deceased) 3RD
PLAINTIFF**

**JENNIFER JEROP KOSKEI ((Suing as the legal
representative/Administrator of the estate
of JACOB KOSGEI-Deceased) 4TH
PLAINTIFF**

= VERSUS =

THOMAS KIPRONO 1ST

DEFENDANT

ALVIN KOCHIL SINGOROCH 2ND

DEFENDANT

MARIGAT GROUP RANCH 3RD

DEFENDANT

FREDRICK KILLEN 4TH

DEFENDANT

JOHN CHEBII 5TH DEFENDANT

MICHAEL CHEROP 6TH

DEFENDANT

LAND REGISTRAR BARINGO COUNTY 7TH

DEFENDANT

THE HON. ATTORNEY GENERAL 8TH

DEFENDANT

JUDGMENT

1. The parcel of land known as **Baringo/Marigat/437** measuring 60 hectares or thereabout, (hereinafter referred to as the suit property) belonged to Marigat Group Ranch, the 3rd defendant herein, before it was registered in the name of the 2nd defendant, Alvin Kochil Singoroch.

2. Registration of the suit property in the name of the 2nd defendant was done on 7th May, 2023 and a title deed issued to him on the same day.
3. The circumstances that led to registration of the 2nd defendant as proprietor of the suit property are that the 2nd defendant claimed to have had a beneficial interest in the suit property because his father, Francis Kipsingoroch Chepkonga, deceased, was a member of the 3rd defendant, member No.30.
4. Issuance of the title deed held by the 3rd defendant was facilitated by the area Land Adjudication Officer, in conjunction with the chief, Marigat location, the Deputy County Commissioner, Marigat Sub County, and the County Surveyor, Baringo County.
5. The 3rd defendant, through its officials, as the owner of the property from which the suit property was created, was not

involved in the process that culminated in issuance of a certificate of title to the 2nd defendant.

6. The reason as to why the 3rd defendant was not involved in facilitation of registration effected in favour of the 2nd defendant is that there were differences between the officials of the 3rd defendant concerning the 2nd defendant's share of the 3rd defendant's land.
7. The evidence adduced in this suit further shows that there had been a dispute between the family of the plaintiffs and that of the defendants as both claimed to have an interest in the suit property.
8. The attempts by the provincial administration to settle the dispute between the plaintiff's family and the defendant's family were futile.
9. Dissatisfied by the decision that culminated in registration of the suit property and claiming that they are the rightful

owners of 380 acres of land comprised in land parcel number **Baringo/Marigat/271**, the plaintiffs filed the instant suit seeking the following reliefs/orders: -

- a) A declaration that 380 acres curved from land parcel **NO. BARINGO/MARIGAT/271** belongs to them;
- b) An order cancelling the name of the 2nd defendant as the owner of all that parcel of land known as land ref **NO. BARINGO/MARIGAT/271**;
- c) An order directing the Land Registrar Baringo County to cause registration of the suit property and issue titles for 90 acres each in the names of the plaintiffs namely; David Kiptarus Kosgei, John Kipkosgei Kurgat, Kipkorir Kosgei and Jennifer Jerop Koskei;
- d) A permanent injunction to restrain the defendants either by themselves, their agents and their servants from trespassing into, cultivating, cutting trees, grazing, charging or in any other manner interfering with 380 acres curved from land parcel

number **BARINGO/MARIGAT/271** currently occupied by them;

- e) General and exemplary damages for trespass;
- f) Costs of the suit
- g) Interest on (d) and (e) at court rates; and
- h) Any other or further relief that the court may deem fair and just to grant.

10. The 3rd, 4th 5th and 6th defendants filed their defence to the suit on 12th July 2024 dated 21st June 2024. The 2nd defendant filed his on 15th July 2024 dated 15th July 2024 and the 7th and 8th defendants filed theirs on 12th November, 2024. The 1st defendant did not file a defence.

11. When the suit came up for hearing, parties through their witnesses led evidence and at close of hearing, filed written submissions which I have read and considered.

12. From the pleadings, evidence adduced by the respective parties and the submissions, I find the issues for the court determination to be as follows: -

- i) Whether the plaintiffs have *locus standi* to institute the instant suit without exhausting the dispute resolution mechanism provided for under the Community Land Act, 2016?
- ii) Whether the title to Baringo/Marigat/437 was lawfully issued and ought to be upheld?
- iii) Whether the plaintiffs have proved any proprietary interest in the suit property?
- iv) What orders should the court make?

13. On whether the plaintiffs have *locus standi* to institute the instant suit without exhausting the dispute resolution mechanism provided for under the Community Land Act, 2016, it is common ground that the plaintiffs are members of the 3rd defendant hence entitled to a share of the property belonging to the 3rd defendant. It is also common ground

that the suit property belonged to the 3rd defendant before it was registered in the name of the 2nd defendant.

14. By virtue of being members of the 3rd defendant, hence beneficiaries of land belonging to the 3rd defendant, the plaintiffs have sufficient interest in the suit property.
15. As to whether the plaintiffs have locus to file the instant suit without exhausting the dispute resolution mechanism provided for under the Community Land Act 2016, in the circumstances of this case, where part of the reliefs sought by the plaintiffs is cancellation of the title deed issued to the 2nd defendant in respect of the suit property, I find and hold that the dispute mechanism provided for under the Community Land Act, 2016 is incapable of addressing all the issues raised by the plaintiffs, particularly the issue as to whether the title held by the 1st defendant was procured unlawfully and/or un procedurally hence ought to be cancelled.

16. By dint of the provisions of **Section 26** as read with **Section 80** of the Land Registration Act, 2012, only a court of law can cancel the title deed held by the 2nd defendant if satisfied that the same was procured by fraud, mistake or unprocedurally.

17. For the foregoing reasons, I find and hold that the plaintiffs could, in the special circumstances of this case, approach this court for determination of the propriety or otherwise of the title issued to the 2nd defendant and not the issue concerning their rightful share of the land belonging to the 3rd defendant. The issue of the plaintiff's entitlement of the land belonging to the 3rd defendant can only be determined through the process/procedure contemplated in Part VIII of the Community Land Act, 2016 and not by this court as the court of the 1st Instance. In that regard, see the decision of this court in **Kabarnet ELC Petition No. E001 of 2024- Harun Kipruto Kapyemit & others VS the The Ministry of Lands, Public Works, Housing & Urban Development** where this court stated/held as follows: -

“The Community Land Act, 2016, which applies to the suit land, has an elaborate dispute resolution mechanism, which they needed to avail themselves to before filing a suit before this court. In that regard see the provisions of Part VIII of the Act which provides as follows: -

“39(1) A registered community may use alternative methods of dispute resolution mechanisms including traditional dispute and conflict resolution mechanisms where it is appropriate to do so, for purposes of settling disputes and conflicts involving community land.

2. Any dispute arising between members of registered community, a registered community and another registered community shall, at first instance, be resolved using any of the internal

dispute resolution mechanisms set out in the respective community by-laws.

3. Where a dispute or conflict relating to community land arises, the registered community shall give priority to alternative methods of dispute resolution.

4. Subject to the provisions of this Act, a court or any other dispute resolution body shall apply the customary law prevailing in the area of jurisdiction of the parties to a dispute or binding on the parties to a dispute or binding on the parties to a dispute in settlement of community land disputes so far as it is not repugnant to justice and morality and inconsistent with the Constitution.

40. (1) Where a dispute relating to community land

arises, the parties to the dispute may agree to refer the dispute to mediation.

2. The mediation shall take place in private or informal setting where the parties participate in the negotiation and design the format of the settlement.

3. The mediator shall have the power to bring

together persons to a dispute and settle the dispute by-

a. convening meetings for the hearing of disputes from parties and keep record of proceedings;

b. establishing ground rules for the rules conduct of parties; structuring and managing the negotiation process and helping to clarify the facts and the issues; and

c. helping the parties to resolve their dispute.

4. If an agreement is reached during the mediation process, the agreement shall be reduced into writing and signed by the parties at the conclusion of the mediation.

41. (1) Where a dispute relating to community land

arises, the parties to the dispute may agree to refer the dispute to arbitration.

2. Where the parties to an arbitration agreement fail to agree on the appointment of an arbitrator or arbitrators, the provisions of the arbitration Act (Cap. 49) relating to the appointment of arbitrators shall apply.

42. Where all efforts of resolving a dispute under this Act fail, a party to the dispute may refer the matter to court.

2. The Court may-

- a. **confirm, set aside, amend or review the decision which is the subject of the appeal; or**
- b. **make any order in connection therewith as it may deem fit.”**

18. In the above cited decision, this court further stated/held: -

“By dint of the provisions of Section 42 of the Community Land Act, parties to a dispute involving community land may only take their dispute to Court after all efforts of resolving a dispute under the Act fail.

My reading of the provisions of Section 42 of the Community Land Act, aforementioned vis-à-vis the other provisions of Part III is that it ousts the jurisdiction of the Court to entertain matters relating to Community Land as a Court of first instance.

In arriving at that legal position, I am persuaded by the decision In the case of Mwasighwa & 55

others vs. Mbulia Community Land & 3 others (2024) e KLR where the Court stated/held:-

“The said Petitioners ought to have demonstrated that they have complied with the applicable provisions of Section 39, 42 of the Community Land Act 2016, Regulation 25 of the Community Land Regulations 2017 and Clause 27 of the Mbulia Community constitution. It is with noting that the Community Land Act is a post-2010 constitution statute which was enacted being alive to the applicable provisions of the Kenyan Constitution by requiring disputes between members of a registered community land under the Act to be resolved by alternative mechanisms before moving to this Court. 29. The court’s jurisprudential policy is to encourage parties to exhaust and honour alternative forums of dispute resolution where they are provided for by statute before approaching the court. Parties cannot veer off, waive or forfeit these dispute

resolution mechanisms as they do not exist in vain. The Court cannot close its eye and overlook the undisputed fact that the dispute should be considered through the provided mechanisms in the first instance. The mere fact that a party pleads constitutional violation doesn't automatically imply that the Court should proceed and determine the Petition as it is in the first instance since the doctrine of exhaustion spells otherwise. The Petitioners cannot take advantage of the court's constitutional jurisdiction over the matter herein without applying the doctrine of exhaustion and adhered to the guiding principles therein"

19. Having approached this court as the court of first instance to resolve the dispute touching on their interest in the suit property, which property is community land belonging to Marigat Group Ranch and there being no exceptional circumstances for exempting the plaintiffs from complying

with the dispute resolution mechanism provided in the Community Land Act regarding the extent of their entitlement to land belonging to the 3rd defendant, I decline to entertain the suit to the extent that it relates to their rights and entitlement to the suit property.

20. On whether the title to **BARINGO/MARIGAT/437** was lawfully issued and ought to be upheld, it is common ground that the 2nd defendant did not obtain his title through the owner of the land, Marigat Group Ranch, but through assistance of government officers like the area chief, the area Deputy County Commissioner and the area Land Registration Officer. I have taken note of the explanation offered by the 2nd defendant for failure to obtain the title through the established channel, which is through the officials of Marigat Group Ranch, being that the Group Ranch officials failed to agree leading to him having recourse to the government officials. Unfortunately, as rightly submitted by the 3rd, 4th, 5th and 6th defendants, the 2nd defendant ought to have moved the court to compel the 3rd defendant to sign

the transfers and/or seek orders for the Court Executive Officer or Registrar to sign them on their behalf. The alleged failure by the officials of the 3rd defendant could not confer jurisdiction or mandate on the said public officials to facilitate registration of the suit property in the 2nd defendant's favour when none existed.

21. Under **Section 23** of the Community Land Act 2016, registered community land may only be converted to private land through the procedure contemplated therein, namely subject to approval of the registered community; -

- a. Transfer; or
- b. Allocation by the registered community, subject to ratification of the assembly as provided in **section 21(2)**.

22. **Section 21(2)** aforementioned provides as follows: -

“A registered community shall, before the conversion of registered community land into any other category of land seek and obtain approval

from two thirds of the assembly in a special meeting convened for that purpose.”

23. The title held by the 2nd defendant having been procured irregularly and/or un procedurally does not enjoy legal protection and is liable to cancellation.
24. The upshot of the foregoing is that the plaintiff's suit succeeds to the extent that I declare the 2nd defendants' title to the parcel of land known **BARINGO/MARIGAT/437** to have been procured and/or obtained un procedurally and in exercise of the powers conferred on this court under **Section 80** of the Land Registration Act 2012, I cancel the title and revert the land comprised therein to the 3rd defendant for allocation to the members of the 3rd defendant, who include the plaintiffs and the 1st and the 2nd defendants in accordance with the applicable law and procedures.

25. On costs, as the plaintiffs have partially succeeded in their case against the 2nd defendant, I award them the costs of the suit to be borne by the 2nd defendant and 7th defendant.
26. Orders accordingly.

**Judgement dated, signed and delivered virtually at Busia
this 22nd day of April, 2026**

L. N. WAITHAKA
JUDGE

In the presence of;

Mr. Lubanga h/b for Mr Kagunza for the plaintiffs

Mr. Kiptoo for the 1st and 2nd Defendants

Mr Chebii for the 3rd to 5th Defendants

N/A for the 6th to 8th Defendants

Court Assistant; Tracy

ORIGINAL