



REPUBLIC OF KENYA



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In re Estate of Kimeto Koitoror Chesir alias Kimeto Arap Chesire - Deceased (Environment and Land Case 76 of 2022) [2025] KEELC 5809 (KLR) (23 July 2025) (Judgment)

Neutral citation: [2025] KEELC 5809 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ITEN
ENVIRONMENT AND LAND CASE 76 OF 2022**

L WAITHAKA, J

JULY 23, 2025

**IN THE MATTER OF THE ESTATE OF KIMETO KOITOROR
CHESIR ALIAS KIMETO ARAP CHESIRE (DECEASED)**

BETWEEN

TABARBUCH TOROITICH 1ST PLAINTIFF

JOSEPH KITAI CHESIRE 2ND PLAINTIFF

AND

FRANCIS KIPTOO KIMETO 1ST DEFENDANT

BENJAMIN KIPLAGAT 2ND DEFENDANT

JUDGMENT

Introduction

1. This matter was filed as Succession Cause No. 145 of 2011 in Eldoret High Court by Francis Kiptoo Kimeto and Benjamin Kiplagat to be issued with grant of letters of administration intestate of the Estate of Kimeto Chesire Koitoror. His assets were listed as Irong/Iten/133. The letters of administration intestate were issued on 13th March 2012. In an application dated 18th December 2012, seeking that the Letters of Administration intestate be confirmed, the applicants included Irong/ Iten/ 121 among the deceased's assets. A certificate of confirmation of grant was issued on 26th May 2014 and the deceased assets were distributed as follows;

- i. Cosmos Kimeto Irong/Iten 121 13.8 Acres
- ii. Francis Kimeto Irong/Iten 121/133 15.8 Acres
- iii. Benjamin Kiplagat Irong/Iten 121 4 Acres



- iv. William Kimeto Irong/Iten 121 10 Acres
- v. Joyce Jerop Irong/Iten 121 14 Acres
2. On 19th December 2014, the plaintiffs in this case Tabarbuch Toroitich and Joseph Kimutai Chesire, filed summons for revocation of the grant, amended on 15th October 2019, issued to Francis Kiptoo Kimeto and Benjamin Kiplagat. Their claim was that Kimeto Arap Chesire was registered as proprietor of Irong/Iten 133 as a trustee for the late Toroitich Chesire Koitoror (their father).
3. On 8th July, 2020 Rose Jepkoech Kimeto and Wilson Kipruto Chebett filed summons for revocation and annulment of the grant issued to Francis Kiptoo Kimeto and Benjamin Kiplagat. Their claim was that the 1st objector was a daughter of Kimeto Arap Chesire and the 2nd objector was a grandson of Kimeto Arap Chesire. Their complaint was that they and other beneficiaries of the Estate of Kimeto Arap Chesire had been left out in the succession proceedings denying them their inheritance.
4. In a ruling delivered by Omondi HJ (as she then was) on 22nd May 2020, the Honourable Judge ordered that the file be transferred to the Environment and Land Court to determine the issue of trust. Having looked at the pleadings and claims by the defendants and objectors, I am of the view that the issue of trust to be determined by this court only relates to the defendants and not the objectors. I will therefore only deal with Land parcel Irong/Iten 133 which the plaintiffs claim Kimeto Arap Chesire was registered as a trustee for their deceased father, Toroitich Chesire Koitoror (their father).
5. The parcel of land known as Irong/Iten/133, (hereinafter referred to as the suit land), was registered in the name of Kimeto Arap Chesire (hereinafter referred to as Kimeto, deceased). Kimeto died in 1983. Registration of the suit land in the name of Kimeto was done on 4th October, 1961. The suit land was transmitted to Francis Kiptoo Kimeto on 7th July, 2014 (Pexbt 3).
6. The plaintiffs who are relatives of the defendants but from a different house, claim that the registration of the suit land in the name of Kimeto was subject to a trust in their favour.
7. According to the plaintiffs, the suit land was registered in the name of Kimeto because their father, Toroitich Chesire Koitoror (hereinafter referred to as Toroitich, now deceased), was away during land adjudication. According to the plaintiffs, their father was working in Uasin Gishu during land adjudication.
8. The defendants filed a statement of defence in which they vehemently opposed the plaintiffs' claim and contended that the suit land is not subject to any trust in favour of the plaintiffs. According to the defendants, the suit land was solely used by Kimeto.

Evidence

Plaintiff's case

9. When the matter came up for hearing P.W.1, Joseph Kimutai Chesire, relied on his witness statement recorded and signed on 8th August, 2016 after it was adopted as his evidence in chief. He produced the documents listed in the plaintiffs' list of documents, dated 8th August 2016 as Pexbt 1 to 13.
10. He informed the court that the suit land belonged to his late father, Toroitich; that the land was registered in the name of Kimeto because his father was working in the white highlands of Uasin Gishu at the time of registration; that his father's family had not been cultivating the land but occasionally grazed on it. He further told the court that his father allowed the son of his brother, Kimeto, to cultivate the land; that he (PW1) cultivated the land for a short period in 2022; that the 1st defendant denied him



- the opportunity to continue cultivating the land and that currently, the suit land is being cultivated by the 1st defendant.
11. further informed the court that after the 1st defendant's father died, a dispute arose. The family held a meeting together with elders and neighbours. It was decided that the suit land should be given to the family of his father, Toroitich. It was also decided that the family of Kimeto should retain land parcel number 121. The family of Kimeto did not agree with the decision and filed a succession cause secretly.
 12. asserted the plaintiffs' pleaded case that registration of the suit land in the name Kimeto was subject of a trust in their favour.
 13. In cross examination, P.W.1 stated that land parcel numbers 121 and 133 were first registered in the name of Kimeto in 1961 and that the title deeds for the two parcels of land, 121 and 133, do not indicate that Kimeto holds the suit land in trust for his father, Toroitich.
 14. The court heard that when P.W.1's father was alive, there was no dispute between him and his step brother over the suit land. Complaints began after 2014 after their fathers died.
 15. He stated that his father and mother are not buried in the suit land. They are buried in family land in Uasin Gishu.
 16. admitted/acknowledged that in Pexbt 6 (minutes) there are no signatures of the persons who attended the meeting. The meeting was attended by members of the families of Toroitich and Kimeto.
 17. stated that he is not aware of the contents of the letter of Josphat, Chief Irong sub location, dated 2nd June 2011, on how land parcels 121 and 133 have been shared out.
 18. On further cross examination, P.W.1 admitted/ acknowledged that in his statement, that was adopted as his evidence in chief, he has not stated that his grandfather or father utilized the suit land. He also acknowledged that the suit land was registered in the name of Kimeto in 1961 and that his father died in 2001.
 19. He further admitted that throughout his life, his father never claimed the suit land but contended that the two brothers knew that parcel number 121 belonged to Kimeto and 133 to Toroitich. There was no written agreement between the two brothers.
 20. He acknowledged that the family of Kimeto is the one which all along has utilized both parcels, 121 and 133.
 21. Kimeto died in 1983. His father died in 2001. After Kimeto died, his father never laid any claim to the suit land.
 22. The dispute between the two families arose after both parents died.
 23. In re-examination, P.W.1 stated that parcel number 133 was given to his father after his grandfather died. Parcel number 121 was given to Kimeto.
 24. His father did not cultivate the suit land, parcel number 133. He allowed one of the sons of Kimeto to cultivate it. There was no written agreement to that effect. The two brothers had a verbal agreement. Each of them knew their land. That's why his father never raised any issue or objection about the suit land being registered in the name of Kimeto.
 25. The court heard that the properties are located in Cheboror location and not Irong. Initially Cheboror was under Irong. It was later carved out and became an independent location.



26. asserted that he is a stranger to the letter dated 2nd June 2011 by Josphat, Chief Irong location and its contents. The author is not the chief for Irong location.
27. PW2, Joseph Limo, retired chief, relied on his statement recorded and signed on 8th August 2016 after it was adopted as his evidence in chief.
28. He informed the court that he presided over meetings held on 23rd April 2010, 7th May 2010 and 17th May 2010; that a decision was made on 17th May 2010 that land parcel No. 133 belonged to Toroitich while 121 belonged to Kimeto. P.W.2 produced the minutes as Pexbt 5. The two families, family of Toroitich and Kimeto family attended the meeting.
29. In cross examination, P.W.2 stated that he was chief of Cheboror location between 1998 and 2016. The suit land is within Cheboror location. The location was carved out of Irong in 1985. Toroitich was a brother to Kimeto. He learnt that when the dispute was brought before him.
30. During Toroitich's lifetime, he never complained about the suit land, parcel number 133. He acknowledged that Pexbt 6 does not show or provide minutes for meetings held on 24th April 2010 and 7th May 2010.
31. He informed the court that Pexbt 6 are minutes of a meeting held on 17th May 2010. He admitted that the minutes do not show all the people including the children of the two families who attended the meeting. He also admitted that none of the people who attended the meeting signed them. He chaired the meeting. He informed the court that the minutes were taken by an assistant chief.
32. On further cross examination, P.W.2 stated that he does not have minutes and/or decisions made in the meetings held on 23rd April 2010, 7th May 2010 and 17th May 2010; that he does not have the names of the elders who made the decision or endorsed it; that when the dispute was brought before him, he was aware the registered owner and the complainant were dead and that he nevertheless, arbitrated over a succession matter.
33. Concerning the letter by Joseph Kibiator, chief Irong, he stated that it does not make sense as the author has never been a chief at Irong. He informed the court that the author of the letter was the assistant chief Kiptabus sub location in Irong.
34. stated that he is aware that the family of Kimeto did not accept the decision in Pexbt 6.
35. In re-examination, P.W.2 stated that Pexbt 6 was not signed by elders and both families in attendance but stated that in the body of the minutes it is clear the meeting was about parcel number 133. He denied having cooked the minutes with the plaintiff's family.
36. PW3, Kwambai Arap Seturwo, recorded a statement, dated 8th August, 2016. The statement was admitted in evidence under Section 33 of the Evidence Act, Cap 80 Laws of Kenya, because Kwambai Arap Seturwo passed on during the pendency of the suit.

Defendant's case

37. DW1, Francis Kiptoo Kimeto, informed the court that the suit land was always utilized by his father alone. (This is not factually correct as he acknowledged that he had filed a suit in the lower court to wit Iten SPM Civil Case No.4 of 2011 seeking to evict the plaintiffs from the suit property. His suit was dismissed with costs).
38. In the suit before the lower court, he claimed that his father bought the suit land. Before this court, he stated that his father was given the suit land by surveyors.



39. In cross examination, he admitted that there was a land dispute between them which was arbitrated on by PW2. He claimed that no resolution was reached regarding the dispute.
40. In re-examination, he asserted that his father was using the suit property before land adjudication. His family did not sign the chief's report of 2010.
41. DW2, Cheruiyot Arap Suter, informed the court that he knew both the deceased Kimeto and Toroitich. He stated that they were initially both living in Tambach and that land parcel 133 belongs to Kimeto. He stated that Toroitich should not have any claim on parcel 133 as he moved away to his land, in Cherangany.
42. In cross examination, DW2 reiterated that he knew both Kimeto and Toroitich as they were his neighbours and came from Tambach. He stated that the two land parcels 133 and 121 belonged to Kimeto because Toroitich had moved to Cherangany. He further stated that both wives of Kimeto were living on land parcel 133.
43. He informed the court that Kimeto started tilling Land parcels No. 121 and 133 before land adjudication. He did not buy the two parcels.
44. In re-examination, D.W.2 asserted that before Kimeto was registered as the owner of parcel 133 no one else was tilling the land.
45. At close hearing, the parties filed submissions which I have read and considered.

SUBMISSIONS

Plaintiffs submissions

46. In their submissions, the plaintiffs have given an overview of the parties pleaded cases and submitted as follows; that the rights of a registered owner are set out under Section 24 of the [Land Registration Act](#) but these rights are subject to overriding interests including customary trust. It is submitted that the evidence on record shows that land parcel 133 is family land being held in trust by Kimeto, deceased, who registered the same as his own after his brother Toroitich went to work in the white highlands.
47. It is submitted that by virtue of Section 33 (a) and (d) of the [Evidence Act](#), the witness statement of one Kwambai Arap Suterwo-deceased was admitted which fortified the evidence admitted forthwith. It is further submitted that DW1, Francis Kiptoo Kimeto could not demonstrate how his father Kimeto deceased, acquired the suit land. They submitted that D.W.1 acknowledged that the suit land belonged to their grandfather Chesire Koitoror, deceased and that land parcel 133 does not form part of the freehold property of the Estate of Kimeto, deceased.
48. The plaintiffs submitted that the evidence they adduced shows that the suit property is subject of a trust in their favour. Based on the decision of the Supreme Court in the case *Isack Kieba H'inaga v Isaaya Theuri M'Lintary & Another SCOK no. 107 of 2015*, where the court outlined the elements of trust, the plaintiffs assert that they have demonstrated that the suit property is family land and urged the court to grant them the orders sought. In the above case the court held:-

Each case has to be determined on its own merits and quality of evidence...some of the elements that would qualify a claimant as a trustee were: (a) The land in question was before registration family, clan or group land, (b) The claimant belonged to such family, clan or group (c) The relationship of the claimant to such family, clan or group was not so remote or tenuous as to make his/her claim idle or adventurous (d) The claimant could have been entitled to be registered as an owner or other beneficiary of the land but for some



intervening circumstances. (e) The claim was directed against the registered proprietor who was a member of the family, clan or group.”

49. The plaintiffs further submitted that it was agreed after the death of Kimeto, according to Keiyo customary law that land parcel 133 be given to the family of Toroitich deceased, while parcel 121 be given to the family of Kimeto, deceased. They relied on the decision in the case of *Kanyi v Muthoni* (1984) KLR 712 and submitted that registration of Kimeto as proprietor of parcel 133 did not extinguish the rights of his late brother Toroitich over the land as it was held in trust. In the above case, the court stated:

“The registration of the land in the name of the Appellant under the Registered *Land Act* (Cap 300) did not extinguish the respondents rights under Kikuyu Customary Law neither did it relieve the Appellant of her duties or obligations under section 28 as a trustee...The trustees referred to in section 28 of the Act could not be fairly interpreted and applied to exclude a trustee under Customary Law, if the Act had intended to exclude Customary Law Rights it would have been clearly so stated”.

50. On whether the court should cancel the registration of Francis Kiptoo Kimeto, Benjamin Kiplagat and that of Kimeto Koitoror Chesire, deceased, as the proprietors of land parcel known as 133, the plaintiffs submitted that the title should be cancelled as it was obtained irregularly by concealment of facts. In that regard reference was made to Section 80 of the *Land Registration Act*.
51. On costs, the plaintiffs submitted that in accordance with Section 27 of the *Civil Procedure Act* costs follow the event and having demonstrated their suit is merited, they should be awarded costs of the suit.

Defendants submissions

52. In their submissions, the defendants given a background of the parties pleaded cases and the evidence adduced in respect thereof and submitted that that no evidence has been tendered to suggest that the defendants’ father moved to his own father’s land. It is their case that the plaintiffs failed to substantiate their claim that Toroitich was indeed an employee of white highlands and that registration of the suit land, 133, in the name of Kimeto is subject to a trust in their favour. They relied on the case of *Ngugi v Kamau & another* (Environment & Land Case 36 of 2020) [2022] KEELC (KLR) (23 June 200) (Judgment) where the court held:-

“The legal burden to prove the existence of the trust rests with the one who is asserting a right under customary trust. To discharge this burden, the person must proof that: -(a)the suit properties were ancestral clan land;(b) during adjudication and consolidation, one member of the family was designated to hold on behalf of the family; (c) the registered persons were the designated family members who were registered to hold the parcels of land on behalf of the family. In essence, one had to lay bare the root of the title to create the nexus or link of the trust to the title holder and the claimant;”

Analysis and determination

53. I have carefully read and considered the parties pleaded cases, the evidence adduced and the submissions filed in respect thereof. From the totality of the evidence adduced in this case, I do find as a fact that the plaintiffs’ parents lived in the suit land long before the suit land was registered in the name of Kimeto Arap Chesire.



54. That fact is made clear by the testimony of D.W.2. From the testimony of D.W.2, which I have no basis for disbelieving, I find as a fact that the suit land was family land before it was registered in the name of Kimeto, in 1961. The foregoing notwithstanding, I hasten to point out that other than leading evidence showing that the suit land was historically family land before it was registered in the name of Kimeto, the plaintiffs have not laid a firm basis for their claim that the suit land is subject to a trust in their favour. Their evidence that the suit land was being used by the family of Kimeto but with their permission or consent was not proven.
55. The conduct of the plaintiffs and their predecessor in claim, comprised in, demonstrated disinterest in the suit property from 1961 when it was registered in the name of Kimeto to way after Kimeto and their parent, on whose behalf they claim interest in the suit land passed on, does not paint them as people who had any legal interest in the suit land.
56. Other than the decision of the elders giving the plaintiffs the suit land to the family of the plaintiffs, the plaintiffs did not lay a firm basis for the decision of the elders that the suit land belongs to the plaintiffs or the plaintiffs' family, to warrant this court adopting the decision of the elders as the decision of this court.
57. Trust being a question of fact, it behoved the plaintiffs to lead evidence capable of proving that the registration of the suit land in the name of Kimeto was indeed subject of a trust in their favour. The totality of the evidence adduced in that regard falls far too short of the evidence required to prove the pleaded trust. For instance, the plaintiffs have not explained why the suit land was not registered in the name of their grandfather whom they claim to have been the owner of the suit land.
58. The evidence adduced in this case shows that the plaintiffs' family relocated to Uasin Gishu, where their grandparents are buried. It has not been demonstrated that the members of the family, who relocated to Uasin Gishu or elsewhere as per the evidence of D.W.2, had the intention of returning to the area where the suit land is situated and/or that when the defendants' father gathered the land during land adjudication, he did so for himself and on behalf of the other members of the family who had moved to Uasin Gishu or some other parts of the country.
59. For the foregoing reasons, I find and hold that the plaintiffs have failed to prove their pleaded case on a balance of probabilities. Consequently, I find their case to be lacking in merits and I dismiss it with costs to the defendants.
60. I transfer the file to Iten High Court to hear and determine the Succession Cause.
61. Orders accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY AT ITEN THIS 23RD DAY OF JULY, 2025

L. N. WAITHAKA

JUDGE

Judgement delivered virtually in the presence of;-

Mr. Mogambi for the Plaintiffs

Mr. Wainaina holding brief for Mr. Momanyi for the Defendants

N/A for the Objectors

Court Assistant: Christine

