



**Choge v Keter & another (Environment and Land Case
137 of 2014) [2025] KEELC 5368 (KLR) (17 July 2025) (Judgment)**

Neutral citation: [2025] KEELC 5368 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ELDORET
ENVIRONMENT AND LAND CASE 137 OF 2014**

EM WASHE, J

JULY 17, 2025

BETWEEN

NELSON KIPYEGO CHOGE PLAINTIFF

AND

WILLY AYABEI KETER 1ST DEFENDANT

MOSES KIPNGETICH KIRISWO 2ND DEFENDANT

JUDGMENT

1. The Plaintiff filed a Plaint dated 2nd May, 2014 (hereinafter referred to as “the present suit”) against the 1st and 2nd Defendants (hereinafter referred to as “the Defendants”) seeking the following orders; -
 - a. A declaration the Plaintiff is the legal and rightful owner of all the parcel of land known as Plateau/Kipkabus Block 4 (Lelmokwo)/31.
 - b. A permanent injunction to restrain the Defendants both jointly and severally and or their agents and or their servants from interfering or dealing in any way with the Plaintiff’s piece of land number Plateau/Kipkabus Block 4 (Lelmokwo)/31.
 - c. An order to all the Defendants both jointly and severally to vacate and or be evicted from the Plaintiff’s parcel of land number Plateau/Kipkabus Block 4 (Lelmokwo)/31.
 - d. Mesne profits from the year 2005 to date.
 - e. Costs and interests of this suit.
 - f. Any other relief this Honourable Court deems fit and just to grant.
2. The facts in support of the prayers hereinabove are as follows; -



- i. That the Plaintiff is the registered owner of the property known as Plateau/Kipkabus Block 4 (Lelmokwo)/31 measuring approximately 10.5 Ha (hereinafter referred to as the suit property).
 - ii. In the year 2005 the Defendants jointly and severally entered into the suit property and cultivated on the same, destroyed trees and begun grazing their animals.
 - iii. The Plaintiff's position is that the Defendants' entry onto the suit property is adverse to his ownership rights and without his consent and therefore illegal and unlawful.
 - iv. The Plaintiff states that despite several pleas and demands for the defendants to vacate the suit property, they have declined to do so to date.
 - v. The Plaintiff therefore is seeking for an order of declaration that he is the lawful and rightful owner of the suit property as registered by law.
 - vi. Secondly, the Plaintiff is seeking for an eviction order against the Defendants from the suit property, and lastly the Plaintiff is seeking a permanent injunction prohibiting the Defendants from either re-entering, re-using or occupying and or having possession of the suit property which belongs to the Plaintiff.
3. The present suit was duly served on the Defendants who filed their Statement of Defence and Counter-Claim dated 16.01.2015.
 4. The Defendants in their Defence sought the Plaintiff's case to be dismissed based on the following facts; -
 - i. The Defendants denied the allegation that they had trespassed into the Plaintiff's property.
 - ii. The Defendants denied the registration of the Plaintiff as the owner of the suit property and put him to strict proof thereof.
 - iii. The Defendants in the alternative stated that if the Plaintiff was ever registered as the owner of the suit property, such registration had long been cancelled for being fraudulent, un-procedural and illegal by the Chief Land Registrar.
 - iv. The Defendants further stated that any subdivisions emanating from the mother title was cancelled by the Chief Land Registrar and any registration of the Plaintiff's ownership was null and void ab initio.
 - v. The Defendants insisted that the mother title which gave rise to the suit property was restricted by the Chief land registrar and any processing of title is in contravention of the restriction hence null and void.
 - vi. In conclusion therefore, the Defendants denied the legitimacy of the Plaintiff's suit property and further denied any trespass, occupation and/or use of the Plaintiff's suit property, if any, as alleged.
 5. In addition to the Defence dated 16.01.2015 the Defendants filed a Counter-Claim against the Plaintiff seeking the following Orders; -
 - a. The Plaintiff's title to the suit property was unlawfully, irregularly, unfairly and un-procedurally acquired hence it be cancelled and declared null and void ab ignition and a fresh survey be conducted for a fair and proper reallocation.
 - b. Costs to the Defendants/Plaintiffs.



6. The facts in support of the prayers in the Counter-Claim are as follows: -
 - i. The Defendants stated that the subdivision of the mother title creating the suit property had been cancelled on the directives of the Chief Land registrar and all titles issued on the basis of the said subdivision were nullified thereafter.
 - ii. The Defendants stated that the process of subdivision of the mother title was undertaken based on an illegitimate succession exercise which was undertaken through misrepresentation of facts and non-disclosure of material facts hence unlawful and a nullity.
 - iii. The Defendants pleaded that the Chief Land Registrar had directed that the mother title be re-surveyed and a new subdivision of the mother title be prepared thereafter.
 - iv. In conclusion, the Defendants stated that the Plaintiff's registration as the owner of the suit property emanating from the cancelled subdivision was irregular, unlawful and in contravention of laid down procedures of the law.
7. The Defence and Counter-Claim was served on the Plaintiff who responded by filing a Reply to Defence and Defence to Counterclaim dated 24.05.2016.
8. In the Reply to Defence dated 24.05.2016 the Plaintiff stated as follows; -
 - i. That the registration of the suit property was obtained lawfully and in compliance with the law and denied any fraudulent actions as alleged.
 - ii. The Plaintiff further denied knowledge of the cancellation of the subdivision in relation to the mother title which gave rise to the suit property.
 - iii. The Plaintiff insisted that the Defendants have indeed trespassed into the suit property which action is adverse to his property rights.
 - iv. The Plaintiff insisted that the suit property was never family land or ancestral land that was subject to any succession.
 - v. As regards any restrictions, the Plaintiff stated that if any were on record, then the same were vacated through Eldoret ELC No. 973 of 2012.
 - vi. In conclusion therefore, the Plaintiff stated that the processing of the title to the suit property was done legally and there is no order of cancellation of the said registration issued by the court.
9. In addition to the Reply to Defence, the Plaintiff filed a Defence to Counterclaim on the following grounds: -
 - i. The Defendant denied knowledge of any cancellation of any subdivision from the mother title and reiterated that the suit property was lawfully registered in his name on 14.02.2005.
 - ii. The Plaintiff therefore denied any fraudulent processes in obtaining the registration of the suit property and pleaded that the suit property was legitimately registered and a title deed issued in his name.
 - iii. In conclusion, the Plaintiff sought the counterclaim to be dismissed.
10. The Plaintiff served the Reply to Defence and Defence to Counterclaim and pleadings subsequently closed.



Plaintiff's Case

11. The Plaintiff's case commenced on 2nd March, 2023 with the testimony of Nelson Kipyego Chego who is the Plaintiff and was marked as PW1.
12. PW1 begun his testimony by informing the court that he was withdrawing his claim against the 1st Defendant who had since passed away.
13. The Court therefore proceeded to mark the suit against the 1st Defendant as withdrawn.
14. As regards the 2nd Defendant, the Plaintiff stated that he had recorded a statement dated 02.05.2014 of which he adopted as his evidence in chief.
15. PW1 testified that he is the registered owner of the suit property and had been issued with a title deed on 04.02.2005.
16. PW1 stated that the suit property was transmitted to him from the estate of Paul Malakwen Choge who was his father.
17. However, in the same year 2005, the Defendant unlawfully trespassed into the suit property and begun cultivating on a portion of the land without his consent and in contravention of his ownership rights.
18. PW1 informed the Court that the 2nd Defendant was cultivating 3 Acres within the suit property which measures 10.5 Ha.
19. Upon discovery of the 2nd Defendant's trespass on the suit property, a demand letter was written to him but he has declined to comply to date.
20. PW1 then produced the following documents in support of his case;-
 - PW1 Exhibit 1 – a copy of the title deed to the suit property dated 04.02.2005.
 - PW1 Exhibit 2 – a copy of the demand letter to the Defendants
21. PW1 confirmed to the Court that the 2nd Defendant had not built any house on the suit property save for cultivating on the same.
22. PW1 informed the Court that the subdivision which created the suit property emanated from a parcel of land measuring 329 Acres that was owned by his father known as Paul Malakwen Choge.
23. Upon the demise of Paul Malakwen Choge, the family undertook succession proceedings whereby the entire 329 Acres which was the asset of Paul Malakwen Choge was divided amongst the mother and the siblings.
24. In essence, the Plaintiff denied the allegation that the Defendants had been in occupation of the suit property for the last 40 years.
25. PW1 reiterated that his desire is to have the 2nd Defendant vacate the portion he cultivates on within the suit property.
26. On cross-examination, PW1 insisted that he had fenced the entire suit property and was cultivating around 10 Acres of the same.
27. PW1 again reiterated that the 2nd Defendant was cultivating 3 Acres within the suit property, although he did not have any evidence to confirm the same.



28. PW1 informed that Court that a demand letter had been done to the 2nd Defendant but he had not complied by giving vacant possession.
29. PW1 denied any knowledge about the cancellation of the subdivision relating to the mother title or the registration to the suit property.
30. In concluding the cross-examination, PW1 denied any blood relationship with the 2nd Defendant and insisted that the trespass started in the year 2005 although he could not remember the exact dated.
31. PW1 also denied any knowledge of any criminal case between his late father and any other person.
32. On re-examination, PW1 stated that he had never received any letter from the Chief Land Registrar requesting him to surrender his title to the suit property for cancellation.
33. At the end of this re-examination, PW1 was discharged from the witness box and the Plaintiff closed his case.

Defence Case

34. The Defence hearing proceeded on 28.03.2025 with the testimony of Moses Kipngetich Kiriswa who is the 2nd Defendant and was marked as DW1;
35. DW1 introduced himself as a farmer who resides in Kipkabus area.
36. DW1 confirmed to the Court that he had prepared, executed and filed a witness statement dated 01.03.2023 which he adopted as his evidence-in-chief.
37. In support of his evidence in chief, DW1 produced the following documents; -
 - DW1 Exhibit 1 – copy of an order dated 20th January, 2001 in the proceedings known as High Court Civil Case No. 235 of 1998.
 - DW1 Exhibit 2 – Copy of an order dated 9th April, 2002 in the proceedings known as High Court Civil Case No. 235 of 1998.
 - DW1 Exhibit 3 – copy of a letter dated 18th November, 1999 from the 1st Defendant to the land registrar Uasin Gishu.
 - DW1 Exhibit 4 – copy of a letter dated 6th December, 1999 from the 1st Defendant’s advocate to the Land control board Eldoret,
 - DW1 Exhibit 5 – copy of a letter dated 15th July, 2009 from the firm of Limo R. K. & Co. Advocates to the Chief Land Registrar.
 - DW1 Exhibit 6 – copy of a charge sheet in relation to criminal case No. 766 of 2001 against Paul Malakwen Choge, Steven Kiprop Maiyo and Abraham Kiprop Choge;
 - DW1 Exhibit 7 – copy of a consent to surrender dated 25th February, 2000.
 - DW1 Exhibit 8 – a copy of a letter dated 7th December, 2004 by the land department to the land registrar Uasin Gishu.
38. DW1 insisted that he had not trespassed into the suit property.
39. DW1 stated that he occupies the property known as L.R No. Plateau/Kipkabus Block 4 (Lelmokwo)/8 which was different from the suit property.



40. DW1 stated that there is a road which divides the property known as Plateau/Kipkabus Block 4 (Lelmokwo)/8 and the suit property.
41. DW1 stated that he occupies the property known as Plateau/Kipkabus Block 4 (Lelmokwo)/8 with his brothers and their families and had no interest in the Plaintiff's suit property.
42. DW1 concluded his evidence in chief by stating that the case against him should be dismissed with costs.
43. On cross-examination DW1 admitted that he was a brother to one James Keter.
44. DW1 further admitted that there was another suit between the said brother James Keter and the Plaintiff.
45. DW1 stated that drawing in the mutation creating their property, that is Plateau/Kipkabus Block 4 (Lelmokwo)/8 is not in line with the ground occupation.
46. DW1 insisted that the Plateau/Kipkabus Block 4 (Lelmokwo)/8 was fenced.
47. DW1 admitted that the original mother title was owned by the entity known as Jackson Kibor and Partners.
48. DW1 stated that his father was one of the partners in that entity.
49. DW1 confirmed to the Court that the mother title was subsequently subdivided among the partners and his father fenced off the portion he was allocated.
50. DW1 informed the Court that his father's portion was supposed to be 145 Acres but the acreage on the title deed of Plateau/Kipkabus Block 4 (Lelmokwo)/8 is only 97 Acres.
51. DW1 stated that their family occupies more than the 97 Acres but they do not know whose land they occupy.
52. DW1 confirmed to the Court that their family had built within the 97 Acres but cultivated beyond the 97 Acres provided in Plateau/Kipkabus Block 4 (Lelmokwo)/8.
53. DW1 nevertheless denied cutting down trees on the suit property that belonged to the Plaintiff.
54. DW1 reiterated that the Plaintiff's title is not lawful as that the subdivision of the mother title was done unlawfully because 2 partners had already died at the time of its surrender.
55. Be that as it may, DW1 confirmed that Plateau/Kipkabus Block 4 (Lelmokwo)/8 is registered in his father's name.
56. DW1 concluded the cross-examination by stating that he had not trespassed into the Plaintiff's suit property.
57. After the cross-examination of DW1 there was no re-examination and the Defendant closed his case.
58. Parties then filed their final submissions with the Plaintiffs submission dated 19.05.2025 while the 2nd Defendant's submissions are dated 07.04.2025.
59. The Court has indeed gone through the pleadings, the testimony of the parties, the evidence produced and the submissions and identifies the following issues for determination:

Issue No. 1- Is the plaintiff the lawful registered owner of the suit property?

Issue No. 2- Are the defendants in occupation of the plaintiff's suit property?



Issue No. 3- Are the defendants in trespass of the plaintiff's suit property?

Issue No. 4- Is the plaintiff entitled to the orders sought in the plaint?

Issue No. 5- Is the defendants counter-claim dated 22.04.2025 merited?

Issue No. 6- Who bears the costs of the plaint and/or counter-claim?

60. The Court having identified the above-mentioned issues for determination, the same will now be discussed herein below.

Issue No. 1- Is the Plaintiff the Lawful Registered Owner of the Suit Property?

61. The first issue for determination is whether or not the Plaintiff is the lawful and legitimate owner of the suit property.

62. According to the Plaint, the Plaintiff was registered as the owner of the suit property in the year 2005.

63. To prove the above fact, the Plaintiff produced his Title Deed to the suit property issued on the 04.02.2005 as PW 1 Exhibit 1.

64. The Plaintiff further informed the Court that the suit property was vested to him after through the Succession proceedings of his deceased father known as Paul Malakwen Choge.

65. The Defendants on the other hand pleaded that the suit property was fraudulently transferred and/or registered in the name of the Plaintiff herein.

66. According to their pleadings and their testimony, the portion of land there are in occupation was their ancestral and/or family home having been beneficiaries of one of the 9 members that acquired the original property known as LR.No.5798.

67. The Defendants further pleaded and testified that the original property known as LR.No.5798 had not been sub-divided and if it was, then such a sub-division was unprocedural and without participation of all the original 9 members of Malel Farm.

68. The Defendants during the hearing admitted that they were not familiar with the boundaries of the various sub-divisions that were created out of the original property known as LR.NO. 5798.

69. To resolve this issue, it is not contested by the Defendants that the suit property was registered in the name of the Plaintiff pursuant to the Certificate of Confirmation of the Grant in the Estate of the late Paul Malakwen Choge issued on the 16.02.2004.

70. The Registration of the suit property in the name of the Plaintiff was done on the 04.02.2005 and the appropriate title deed issued.

71. The Defendants raise two points in challenging the Plaintiff's registration over the suit property.

72. The first issue is that the portion of land within which the suit property is contained was and/or is their ancestral home.

73. The provisions of Section 107 of the *Evidence Act*, Cap 80 places the burden of proving such a fact on the Defendants.

74. The first exercise in proving the fact that it was their ancestral home would have been to provide documentary evidence through photographs and statements from other government officers and/or senior members of the community to prove that indeed the Defendants occupation started with their forefathers and has since been passed to the current occupants including the Defendants.



75. It is also crucial to point out that during the hearing of DW 1, it was his admission that he was a beneficiary of one of the original 9 members that had acquired the property known as LR.No.5798.
76. Consequently, it goes without saying that any proprietary rights amongst the original 9 members who owned the property known as LR.No.5798 could only have been recognized after the acquisition of the said property and none of the beneficiaries of the original 9 members can claim ancestral rights superseding the ownership rights of the beneficiaries of the other remaining 8 original members.
77. As such, the Defendants claim that the portion their occupation on the original property known as LR.No.5798 is their ancestral and/or family land is misguided and does not hold any legal basis.
78. The second issue raised by the Defendants as regards the Plaintiff's registration is that the process is flawed as the documents used were fraudulent, forged and not procured lawful.
79. Once again, the burden of proving these facts lies on the shoulders of the Defendants are provided under Section 107 of the Evidence Act, Cap 80.
80. The expectation of the Court was that the Defendants would have taken time to obtain the documents which were allegedly forged and/or registered fraudulently from the Government Offices and/or any other entity and thereafter present them in Court with a view of proving that either they were forged and/or registered in a manner that was contrary to the law and procedure.
81. Unfortunately, the Defendants never presented any document that was either prepared by the Plaintiff and any other person that was either forged and/or registered in a manner contrary to law.
82. In other words, this Court is of the considered opinion and finding that the Defendants did not prove the facts that the suit property forms part of their ancestral and/or family home and/or that the process used by the Plaintiff to be registered as the registered owner of the suit property was fraudulent.
83. As such, this Court hereby makes finding that the Plaintiff is the lawful registered owner of the suit property herein.

Issue No. 2- Are the Defendants in Occupation of the Plaintiff's Suit Property?

84. The second issue for determination is whether or not the Defendants are in occupation of the suit property.
85. According to the Plaintiff, the Defendants trespassed into the suit property in the year 2005 and have been in occupation of the said portion of land through cultivating, grazing and/or constructing semi-permanent houses.
86. The Defendant in their Defence and Counter-Claim dated 16.01.2015 disputed the fact that they are in occupation of the suit property.
87. The Defendant testified that they occupy the property known as LR.No.Plateau/Kipkabus Block 4 (Lelmokwo)/8 which measures approximately 97 Acres.
88. However, the Defendant insisted that the property known as LR.No.Plateau/Kipkabus Block 4 (Lelmokwo)/8 was supposed to be about 145 Acres.
89. Consequently, the Defendant admitted that they were cultivating on portions of land beyond the 97 acres contained in the title of their property known as LR.No.Plateau/Kipkabus Block 4 (Lelmokwo)/8.



90. The Defendant informed the Court that he did not know in whose name the portion he was cultivating belonged to and also could not identify the boundaries of the property known as LR.No.Plateau/Kipkabus Block 4 (Lelmokwo)/8.
91. In essence therefore, it is this Court's finding that the Defendant are in actual occupation and use of the suit property as pleaded by the Plaintiff in his Plaint date 02.05.2014.

Issue No. 3- Are the Defendants in Trespass of the Plaintiff's Suit Property?

92. The third issue is whether the Defendants occupation on the suit property amounts to trespass or not.
93. Based on the finding that the Plaintiff is the lawful registered owner of the suit property as provided in Issue No.1, Section 24 and 25 of the *Land Registration Act*, No. 3 of 2012 gives exclusive ownership and occupational rights over the suit property to the Plaintiff.
94. Any occupation of the suit property by the Defendant as found under Issue No. 2 without the consent and/or authority of the Plaintiff amounts to trespass in law.
95. The Plaintiff in the Plaint dated 02.05.2014 denied granting the Defendant any permission and/or consent to enter, occupy and/or use the suit property.
96. The Defendant on the other hand have also not pleaded and/or provided any proof that they entered, occupy and/or use the suit property with the consent of the Plaintiff.
97. Clearly therefore, this Court hereby makes a finding that the Defendant entry, occupation and/or use of the suit property contrary to the ownership rights of the Plaintiff without his consent amounts to trespass.

Issue No. 4- Is the Plaintiff Entitled to the Orders Sought in the Plaint?

98. The fourth issue is whether or not the Plaintiff is entitled to the prayers sought in the Plaint dated 02.05.2014.
99. Based on the determinations in Issue No. 1, 2 and 3, this Court makes a finding that the Plaintiff is entitled to Prayers No. 1, 2 and 3.
100. However, as regards to Prayer No. 4 which is seeking for Mesne Profits, the Plaintiff did not table any documentary evidence to quantify the amount of loss and/or use that he has suffered since the Defendants trespassed into the suit property.
101. Consequently, the Plaintiff's claim for Mesne Profits is disallowed in toto.

Issue No. 5- Is the Defendants Counter-claim Dated 22.04.2025 Merited?

102. As regards the Counter-Claim by the Defendants, the same was premised on the issue of ancestral and/or family land and the allegations of fraud.
103. However, the Court having made findings that none of these allegations were proved by the Defendants, then their Counter-Claim automatically fails.
104. The Court therefore makes a finding that the Counter-Claim dated 16.01.2015 is not merited and is disallowed.



Issue No. 6- Who Bears the Costs of the Plaint And/or Counter-claim?

105. The last issue is who bears the costs of the Plaint and the Counter-Claim.
106. Costs usually follow the event and, in this case, the Plaintiff was successful to prosecute the Plaint and is entitled to the Orders sought therein while the Counter-Claim was dismissed.
107. As such, the Defendant is condemned to pay the costs of the main suit and the Counter-Claim as well to the Plaintiff herein.

Conclusion

108. In conclusion, this Court hereby makes the following orders in determination of the Plaint dated 02.05.2014 and the Counter-Claim dated 22.04.2015; -
- a. The plaint dated 02.05.2014 be and is hereby allowed.
 - b. The plaintiff is declared the lawful and letigimate registered owner of the suit property known as lr.no. Plateau/Kipkabus Block 4 (Lelmokwo)/31.
 - c. The defendant be and is hereby ordered to vacant, remove his cultivations, developments, cattle and/or yield vacant possession of the property known as lr.no. Plateau/Kipkabus Block 4 (Lelmokwo)/31 to the plaintiff within 30 days from the date of this judgement.
 - d. In the event of non-compliance with order No. c hereinabove within 30 days from the date of this judgement, an order of eviction be and is hereby issued against the defendant in person, through his agents, servants, employees and/or any other persons deriving their occupation from the interests of the defendant herein from the property known as lr.no. Plateau/Kipkabus Block 4 (Lelmokwo)/31.
 - e. A permanent injunction be and is hereby granted to the plaintiff prohibiting the defendant either through his agents, servants, employees and/or other persons deriving their occupation from the interests of the defendant from re-entering, occupying, using, grazing, cultivating, constructing and/or in any other way interfering with the use, occupation and/or ownership of the property known as lr.no. Plateau/Kipkabus Block 4 (Lelmokwo)/31 belonging to the plaintiff.
 - f. The counter-claim dated 16.01.2015 be and is hereby dismissed.
 - g. The defendant is condemned to pay the costs of the main suit and the counter-claim to the plaintiff herein.

DATED, SIGNED & DELIVERED VIRTUALLY AT ELDORET ELC THIS 17TH DAY OF JULY 2025.

EMMANUEL.M. WASHE

JUDGE

In the Presence of:

Court Assistant: Brian

Plaintiff: Mr. Mengich h/b Mr. Murgor

Defendant: Ms. Akinyi

