



REPUBLIC OF KENYA



**KENYA LAW**  
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**Bowen v Chebungei (Environment and Land Appeal 12 of 2023)  
[2024] KEELC 227 (KLR) (23 January 2024) (Judgment)**

Neutral citation: [2024] KEELC 227 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KABARNET  
ENVIRONMENT AND LAND APPEAL 12 OF 2023**

**L WAITHAKA, J  
JANUARY 23, 2024**

**BETWEEN**

**ISAIAH BOWEN ..... APPELLANT**

**AND**

**GRACE CHELAGAT CHEBUNGEI ..... RESPONDENT**

*((Being an appeal from the judgment of the Hon. Senior Principal  
Magistrate Paul C. Biwott delivered by Hon. Chief Magistrate J. Wanjala  
on the 30th of June, 2022 at Kabarnet in ELC No. E002 of 2020))*

**JUDGMENT**

**Introduction**

1. By a Plaintiff dated 26<sup>th</sup> October 2020 and filed on an even date, the respondent herein instituted a suit in the lower court to wit Kabarnet CMC ELC Case No.E2 of 2020 seeking judgment against the appellant herein for an order of permanent injunction to restrain the appellant by himself, his agents, children, servants, employees from interfering by threatening, invading, evicting, disposing through sale, transferring, alienating, building, entering, destroying any fixture or attachments or fencing in whatsoever manner, the parcel of land known as Title Number Baringo/Marigat/384 measuring approximately 0.11 ha (hereinafter referred to as the suit property); an order of exemplary/punitive damages; costs of the suit plus interest at court's rate.
2. The respondent's case was premised on the grounds that she is the registered owner of the suit property; that she purchased the suit property for value from Michael Chepsergon on 15<sup>th</sup> April, 2015; that the appellant through his children, employees and/or agents wrongfully and forcefully invaded the suit property and stopped her employees from fencing it thereby denying her the right to peaceful and quiet enjoyment of the suit property.



3. Lamenting that as a result of the appellant's unlawful interference with her rights to the suit property she has suffered and continues to suffer loss and damage, the respondent sought the reliefs listed herein above.
4. Upon being served with the suit papers, the appellant filed a statement of defence and counterclaim denying the allegation levelled against him and contending that the respondent illegally and fraudulently acquired the suit property.
5. The particulars of the pleaded fraud and illegality levelled against the respondent are listed in paragraph 23 of the counterclaim thus:-
  - a. Failing to follow due process in executing transfer forms;
  - b. Buying land without regard to subsisting owner utilizing and owning the land;
  - c. Acquiring a certificate of title fraudulently, illegally, unprocedurally and through corrupt scheme;
  - d. Acquiring the land without consent of the affected members and oblivious of the consent of the owner utilizing the land parcel;
  - e. Masquerading as a member of the group ranch.
6. By way of counterclaim, the appellant sought judgment for a declaration that the 2<sup>nd</sup> defendant in the counterclaim (Michael Chepsergon) unlawfully and or fraudulently sold to the 1<sup>st</sup> defendant in the counterclaim (the respondent) the suit property; an order for cancellation of the respondent's title and the respondent's case be dismissed with costs.
7. The respondent filed a reply to defence and a defence to the counterclaim denying the appellant's claim and contention that she obtained the suit property illegally and/or fraudulently.

## **Evidence**

### **Plaintiff's case**

8. When the case came up for hearing, the respondent informed the court that she bought the suit property in 2014 from Michael Chesergon; that she bought the suit property from a member of the group ranch and that the group ranch allowed the seller, who was its member, to sell the suit property to her.
9. Michael Chepsergon, confirmed the respondent's testimony to the effect that he sold to her the suit property. He sold the land to the respondent in bits. The suit property was his and not the appellant's.
10. John Chebii Kipkalim, secretary to Marigat Group Ranch, informed the court that the group ranch had subdivided its land and issued about 200 title deeds to its members, one of them being Michael Chepsergon, P.W.2. He stated that they have disputes over ownership of land in the group ranch; that the disputes are resolved by elders with the help the local administration leaders like area assistant Chief and Chief; that the land allocated to Michael Chepsergon, P.W.2 had no dispute and they processed title for him which title is genuine.
11. He further informed the court that the appellant is yet to get his own title deed.
12. In re-examination, he stated that after a member of the group ranch gets a title deed for his/her portion, he/she is free to sell his/her land.



## **Defendant's case**

13. The appellant, who testified as D.W.1, informed the court that his claim of ownership on the suit property is on account of being a member of Marigat Group Ranch and that he was entitled to 35 acres from the group ranch.
14. The appellant informed the court that he was in occupation of the suit property when the respondent bought it and acquired a title in respect thereof.
15. The appellant acknowledged that the group ranch had issued titles to some of its members and admitted that such persons could sell their land.
16. The appellant also acknowledged that his 35 acres share of land from the Group Ranch is not mapped out or surveyed and that the respondent has a title deed in respect of the suit property. He told the court that he does not know how the respondent got title to the suit property. He further stated that they have a case at the group ranch over the suit property.
17. The appellant further stated that it is the group ranch which transferred the suit property to the respondent and contended that the group ranch could neither transfer the land without participation of its members nor transfer the land to none members.
18. D.W.2, Daniel Chalagat, led evidence to the effect that the suit property belongs to the appellant and that Michael Chepsergon had no right to sell it to the respondent.
19. D.W.3, Wilson Chepchumba Cheror, informed the court that the suit property belongs to the appellant.
20. D.W.4, John Hacku, Land Adjudication Officer Baringo County, informed the court that the title deed for the suit property can only be ascertained by the group ranch officials. The group ranch officials had power to give titles to individuals before dissolution. His office was not involved in the process of transfer of the group ranch land yet it has supervisory role to the process. It is his testimony that the title deeds should not have been issued without involvement of their office.
21. D.W.5, Mark Odhiambo Otieno, County/District Surveyor, informed the court that their office was involved in the subdivision of the entire group ranch land; that the Land Registrar had issued some titles for some of the subdivisions.
22. D.W.6, Christine Nyabiege Ogaro, the Land Registrar Baringo County, informed the court that title deeds are issued according to list given by group ranch officials. According to the certificate of search from their office the suit property belongs to the respondent, Grace.
23. D.W.7, Kipruto Kimengich, testified that the suit property belongs to the appellant and that the person who sold it to the respondent should not have done that. He had no idea how the respondent got her title deed for the suit property.
24. On the basis of the pleadings, evidence and submissions filed by the parties, the learned trial magistrate entered judgment in favour of the respondent and against the appellant. In doing so, he stated:-

“From the evidence given, it is not in dispute that PW2 and defendant were members of Marigat Group Ranch and had/have shares. PW2 confirmed it. PW 2 sold his share (portion) to plaintiff herein who processed title deed. The plaintiff took up the portion measuring 0.11Ha. The defendant's share according to him is 35 acres. He had not processed his Title Deed yet. His portion has not been demarcated in the 18,000 acres Ranch. The



plaintiff has not taken his portion but that of PW2 which was sold. The Group Ranch has issued over 200 Title Deeds to members according to PW2. The defendant should have followed suit and get title for the 35 acres due to him and not rely on his position on the ground. Changes do come during demarcation and a member may find positions changing but shares remain the same.

Having purchased the land from a genuine member and registered it in her name, I find that plaintiff's is merited. The defendant failed to prove the allegations of fraud. He has not even taken his allegations to police if at all. I dismiss his defence and counter-claim with costs to the plaintiff.

The plaintiff processed her Title Deed with full knowledge of the Group Ranch. She is the Absolute owner of the suit parcel as provided under section 24 of the Registered Lands Act. A permanent injunction against the defendant as prayed for in prayer (a) of her plaint is granted. Prayer (b) is not proven and will not grant it. The plaintiff shall however have costs of this suit and interest on it at court rates."

25. Aggrieved by the decision of the lower court, the appellant appealed to this court on nine (9) grounds that can be reduced to one broad ground namely, the learned trial magistrate erred in allowing the respondent's case and dismissing his defence and counterclaim.
26. Pursuant to directions given on 27<sup>th</sup> September 2023, that the appeal be disposed of by way of written submissions, the parties filed submissions which I have read and considered.

## **Submissions**

### **Appellant's Submissions**

27. In the appellant's submissions filed on 27<sup>th</sup> November 2023, an overview of the case as urged by the parties is given and three issues are framed for the court's determination. These are;-
  - a) Whether the title deed for the suit land was procedurally obtained.
  - b) Whether the appellant has proved his case
  - c) Who bears the costs.
28. On the first issue, the appellant submitted that PW1 who was not a member of the Group Ranch, purchased the suit property from PW2. He submitted that the respondent did not attend the Land Control Board but signed the transfer papers brought to her; that she failed to furnish copies of stamp duty payments made to warrant the transfer. The appellant disputes the sale agreement dated 2015 which the respondent relied upon saying that it did not indicate the description of the parcel of land sold. He submitted that PW2 who was a member of the group ranch, sold his land and surrendered his title for subdivision but did not produce a copy of the title he alleges to have presented for subdivision. He further submitted that the original title that gave rise to the disputed land was not indicated and that the copy of the title only indicates a transfer was done to the respondent directly from the group ranch. The appellant also faulted the application for consent produced by the respondent in the trial court for being undated and unsigned. According to him, expert evidence indicates that the District Land Settlement and Adjudication Officer Baringo, was not involved in the process as he is the person in charge of ascertaining interest and rights in land under adjudication and group ranches (now defunct to community land). He submitted that a third party who is not a registered member of a group ranch cannot own land belonging to the group ranch and cannot get a genuine title. He submitted that the group ranch officials did not follow due process in generating the impugned title.



29. On the second issue, the appellant submitted that the procedure used by the respondent in acquiring the land was questionable. He asserts that he filed a counter claim that remained unchallenged.

### **Respondent's Submissions**

30. In the respondent's submissions filed on 22<sup>nd</sup> November 2023, an elaborate background of the case is given and three issues are framed for the court's determination

These are: -

- I. Whether the respondent lawfully acquired the suit property parcel number Baringo/Marigat/384?
  - II. Whether the court failed to consider the appellants evidence and/or counter claim?
  - III. Whether there was a competent appeal before the court.
31. On the first issue, it is submitted that the respondent purchased the suit property from one Micheal Chepsergon (PW2), a member of the group ranch for Kshs. 340,000/- and caused herself to be registered as the proprietor of the suit property.
32. The respondent submitted that PW2 confirmed that he sold the suit property for value on 15<sup>th</sup> April, 2015 and transferred the land after surrendering the original title deed for subdivision and transfer. The respondent further submitted that the evidence of PW2 is corroborated by PW3 the group ranch secretary, John Chebii Kipkaliny who confirmed that PW2 was a member of the group ranch.
33. It is submitted that the appellant has failed to demonstrate any fraud on the part of the respondent which would warrant this court to impeach the respondent's title deed and that he has not contested the membership of PW2 as a member of the group ranch. It is further submitted that the appellant has conceded that the respondent purchased the suit property from PW2 thus the allegation of fraud is vacated. She relied on the case of Arthi Highway developers ltd v West End Butchery Limited & 6 others (2015) eklr and Section 107 of the [Evidence Act](#).
34. The respondent submitted that although the appellant is a member of the group ranch, he is yet to be allocated land to warrant him assert ownership rights and that he has failed to show that he was allocated 35 acres or the suit property. Reliance is placed on an earlier decision by this court; Iten-ELCA E006 of 2022 Isaiah Bowen v Andrew Kwonyike.
35. On the second issue, the respondent submitted that the appellant's defence and counterclaim against PW2 and the group ranch was incompetent as it was filed without leave of the court.
36. On the third issue, the respondent submitted that the Appeal is not competent as a decree was not annexed to the memorandum of appeal. They relied on the case of Kitale ELC NO. 7 of 2022 Benard Kamau Mbugua v Khimji Karshan Chabhadia and 3 others.

### **Analysis and determination**

37. In exercise of the duty vested in this court as a first appellate court, I have re-evaluated the evidence adduced before the lower court with a view of reaching my own conclusion on it. I have reminded myself that a first appellate court will not ordinarily interfere with findings of fact by the trial court unless they were based on no evidence at all, or were based on misapprehension of the evidence or unless it is demonstrated that the trial court acted upon wrong principles in reaching the finding. In that regard see the case of Selle & another vs. Associated Motor Boat Co. Ltd (1968)E.A 123



and *Mwanasokoni vs. Kenya Bus Service Ltd (1982-88)* 1 KAR and *Kiruga vs. Kiruga & Another (1988)* KLR 348.

38. The respondent is the registered proprietor of the suit property. She obtained title to the suit property by way of purchase of the suit property from Michael Chepsergon (P.W.2), a member of the group ranch.
39. The evidence adduced before the lower court shows that the group ranch had subdivided its land and issued title deeds in respect of some of its members, one of such beneficiaries being Michael Chepsergon.
40. Whilst the appellant urged a case of fraud in registration of the suit property in the name of the respondent, he did not adduce evidence capable of proving the pleaded fraud. In any event, it is only the group ranch through its representatives, that could sue on behalf of its members concerning land belonging to the group ranch. Individual members of a group ranch lack capacity to sue until and unless they have acquired private interest in the land belonging to the group ranch. In that regard, see the case of *Daniel Mamagul Kande & 2 Others vs. Kamanga Holdings Ltd & 44 others (2017)* e KLR where it was held:-

“Having read the provisions of Sections 5, 7 and 8 of the Act, and the cases of *Simon Tapai Santento Kimnyak Ole Sale (Suing on behalf of 78 Olepols Village Members) v Ita Ole Bulati & 8 others [2011] eKLR* and *Nkol Risha Ole Ntomp Kerery and 4 others v. Chairman Larngosua Group Ranch & 9 Others Nairobi HCCC No. 269 of 2001*, I agree with the defendants that the plaintiffs not being the group representatives contemplated under the aforementioned sections of the law, have no capacity to sue on behalf of the group ranch, the members of the group ranch or on their own behalf.

In the case of *Simon Tapai Santento Kimnyak Ole Sale (Suing on behalf of 78 Olepols Village Members) v Ita Ole Bulati & 8 others (supra)*, Wendoh J., observed:

“It does not seem to be in dispute that the land in issue generally belongs to Naroosura Group Ranch. It has not yet been subdivided. The land is therefore governed by the Land Group ( Representative) Act Cap. 287, Laws of Kenya. The question is therefore whether the applicants are properly before the court. Under Section 5 of the Act, a meeting of the Group, convened by the Registrar after due notice, elects its representatives. Under Section 7, the said representatives who then apply for incorporation and under Section 8, the certificate of incorporation confers on the representatives power to sue and be sued in the corporate name, acquire, hold or charge and dispose of property of any kind and borrow money with or without security. Section 9 then provides for change in the Group representatives. In the event of disputes, Section 10 allows the Registrar to intervene or the same be adjudicated upon by the District Magistrate’s Court. It seems that there are disputes in the Group Ranch over leadership and ownership or use of land as admitted by the applicants in the further affidavit at paragraphs 9 to 14. That being the case, the applicants should first exhaust the dispute resolution mechanism under the Act (Section 10) before they can venture to come to this court. Besides, it is clear from Section 5 and 7 that the applicants have no locus to bring this application as they are not Group representatives recognized under Section 8 of the Act. The Group Ranch is still in existence and the applicants must comply with Chapter 287, Laws of Kenya, and Rules of the Group to which the Group is subject.....Apart from the applicants lacking the necessary locus standi to bring this suit, this application offends provisions of the Group Ranch Representatives Act. I do uphold the objection based on



the preliminary objection filed by the Respondent and the application dated 28/7/2010 is hereby dismissed with the applicants bearing the costs.”

41. The totality of the evidence led in this case, shows that the respondent lawfully acquired interest in the suit property, by way of purchase from a member of the group ranch who had acquired title to his share of the group ranches' land.
42. The pleaded fraud or illegality was not proved. The mere fact that the appellant was in occupation of a portion of land belonging to the group ranch did not make him owner of the land.
43. In the end, I find the appeal to be lacking in merits and I dismiss it with costs to the respondent.
44. Orders accordingly.

**DATED, SIGNED AND DELIVERED AT ITEN THIS 23<sup>RD</sup> DAY OF JANUARY, 2024.**

**L. N. WAITHAKA**

**JUDGE**

**Judgment delivered virtually in the presence of:-**

**N/A for the appellant**

**Mr. Chebii for the respondent**

**Christine Towett – Court Assistant**

