



Cheptoo (Suing as Administrator of the Estate of the Late Cheboi Chemwetich) v Attorney General & 2 others (Environment & Land Case 38 of 2022) [2024] KEELC 187 (KLR) (22 January 2024) (Judgment)

Neutral citation: [2024] KEELC 187 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ITEN
ENVIRONMENT & LAND CASE 38 OF 2022
L WAITHAKA, J
JANUARY 22, 2024**

BETWEEN

**PETER KANGOGO CHEPTOO PLAINTIFF
SUING AS ADMINISTRATOR OF THE ESTATE OF THE LATE CHEBOI
CHEMWETICH**

AND

**THE ATTORNEY GENERAL 1ST DEFENDANT
LAND REGISTRAR, ELGEYO MARAKWET COUNTY 2ND DEFENDANT
CHANGWONY KIPCHOBOS CHEBOI 3RD DEFENDANT**

JUDGMENT

Background

1. This suit relates to the parcel of land known as Elgeyo Marakwet/Kessup “B”/1704 (hereinafter referred as the suit property). The suit property was initially registered in the name Cheboi Chemwetich Cheboi (deceased) before it was registered in the name of Changwony Kipchobos Cheboi. Registration of the suit property in the name of the deceased was done on 1st October 1994 while registration in favour of the defendant, Changwony Kipchobos Cheboi, was effected on 17th December 2010. In that regard, see copy of the register for the suit property (green card) attached to the 1st and the 2nd defendant’s list of documents that was produced in evidence. The green card shows that on 21st July 2010, a restriction was registered in favour of the defendant who claimed to have beneficial interest in the suit property.
2. It is noteworthy that at the time the restriction was registered in the name of the defendant and registration subsequently effected in his favour, the deceased had passed on; having passed on 11th



- January 2006 as attested by the copy of certificate of death produced in evidence by the plaintiff as Pexbt 1.
3. Complaining that the defendant trespassed into the suit property and illegally/fraudulently caused it to be transferred in his name, the plaintiff prays for cancellation of all the illegal entries in the register of the suit property; reversion of the suit property to him as administrator of the estate of the deceased; *mesne profits* from the time of illegal registration of the suit property in the name of the defendant until judgment; general damages; punitive damages; costs of the suit and interest.
 4. Particulars of illegality/fraud levelled against the defendants are listed in paragraph 8 of the plaint thus:-
 - a. Placing an illegal restriction on 21st July 2010 claiming beneficiary interest by one Changwony Kipchobos Cheboi without notifying the plaintiff or the family of the late Cheboi Chemwetich Cheboi who are true owners by the 2nd defendant while serving as the first defendant's client;
 - b. On 17th December 2010, registration of Cheboi Chemwetich Cheboi (true owners) was deleted illegally and restriction removed;
 - c. Illegally issuing a title deed to the 3rd defendant;
 - d. Transferring the suit property to the defendant without involving the plaintiff/family of Cheboi Chemwetich Cheboi;
 - e. Transferring the suit property without the requisite consents and transferor i.e the plaintiff;
 - f. Issuing improper/illegal title to the defendant when he was neither a purchaser for value nor a proper inheritor under custom;
 - g. Making entries in the register of the suit property without the plaintiff's knowledge and in disregard of the applicable law and procedures;
 - h. Taking illegal possession of the land and denying the plaintiff occupation and use of the suit property by the 3rd defendant;
 - i. Effecting conveyance without Land Control Board consent as by law required.
 5. The 1st and 2nd defendants filed a joint statement of defence denying any wrongdoing in registration of the defendant as the proprietor of the suit property and claiming that they were not aware of or party to the pleaded fraud. The 1st and 2nd defendants further claim that the actions complained of were as a result of mistake or being duped.
 6. The 1st and the 2nd defendants have expressed willingness to abide by any directions given by the court concerning the suit property.
 7. The 3rd defendant filed a statement of defence and counterclaim denying the allegations levelled against him and urging the court to declare him the bona fide owner of the suit property.

Evidence

The Plaintiff's Case

8. When the case came up for hearing, PW1 Peter Kangogo Arap Cheptoo, relied on his witness statement dated 24th April, 2017 after it was adopted as his evidence in chief. He informed the court that the suit property belongs to the late Cheboi Chemwetich whose estate he represents. He produced a temporary



- grant of letters of administration issued to him as Pexbt 2. He stated that he carried out a search and established that the 3rd defendant was issued with a title deed for the suit property which is family property and that they had been utilizing the suit property for a long period of time.
9. PW1 further informed the court that he was given a card indicating that the suit property was previously registered in the name of Cheboi Chemwetich. The registration of Cheboi Chemwetich was later cancelled and a title deed issued to the 3rd defendant.
 10. Upon getting that information, he went to his lawyer who issued a demand letter to the 3rd defendant. He also reported the matter to the area chief who summoned the 3rd defendant. The 3rd defendant refused to heed the Chief's summon. The chief advised them to go to court. He produced the demand letter dated 10th September, 2015 Pexbt 3. He urged the court to grant him the orders sought in the plaint.
 11. In cross examination, PW1 stated that the deceased (Cheboi Chemwetich) is his uncle. Upon being shown a copy of the title deed issued to the 3rd defendant, PW1 stated that he does not know how the 3rd defendant got it. He informed the court that the 3rd defendant is his distant relative.
 12. In re-examination, PW2 stated that the title deed held by the 3rd defendant was obtained fraudulently; that he attended the meeting called to resolve their dispute; that the meeting did not resolve that the suit land be given to the 3rd defendant. He reported the matter to the chief and the Land Registrar but he did not make a report to the police.
 13. PW2 Joseph Yator, informed the court that he knows Cheboi Chemwetich; that the plaintiff is a step son of the deceased; that he is the one who surveyed the suit property and that the 3rd defendant encroached on the suit property. He further stated that he was present in the meeting which arbitrated the land dispute.
 14. In cross examination, he stated that the land belongs to the plaintiff and not the 3rd defendant. According to him, the 3rd defendant obtained title to the suit property fraudulently.
 15. In re-examination, he stated that the reason why he stated, in his written statement, that the plaintiff is the son of the deceased is because the plaintiff is a son of his deceased's brother.
 16. PW3 John Cherop Cheso, informed the court that the parties to the suit are distant relatives; that the suit property is ancestral and that the 3rd defendant got his title fraudulently.

The Defendant's Case

17. DW1 Robert Sandiki, informed the court that he is the Land Registrar, Elgeyo Marakwet; that he has the parcel file and register for the suit property; that according to the register for the suit property, the 1st proprietor, Cheboi Chemwetich Cheboi was registered on 1st October, 1994; that Cheboi Chemwetich did not collect his title deed.
18. DW1 further informed the court that the 2nd entry in the register is a restriction lodged by Changwony Chemjor (3rd defendant herein) claiming beneficiary interest. The entry was lodged on 27th July, 2010. The restriction was received on 17th December, 2010.
19. Entry No. 4 shows that the owner of the land is Chamgwony Kipchobos Cheboi. Chamgwony Kipchobos Cheboi, applied for correction of name on 28th October, 2010. The application was certified by the chief.



20. DW1 informed the court that the area chief verified and clarified Chamgwony Kipchobos Cheboi is one and the same person as Changwony Kipchopbos Cheboi.
21. DW1 explained that entry No. 4 is as a result of correction of names. He produced an extract of the register for the suit property as Dexbt 1 and the application for correction of names Dexbt 2.
22. He denied the allegation that they issued the title without following the correct procedure.
23. In cross examination, DW1 stated that the registered owner of the parcel is Changwony Kipkobus Chebii. When they issued the title deed, they were not aware that Cheboi Chemwetich was deceased.
24. In re-examination, DW1 stated that the land has never been transferred to any other person.
25. DW2, William Chemjor Changwony relied on his witness statement recorded on 16th October 2023 after it was adopted as his evidence in chief. He informed the court that he does not know the plaintiff.
26. In cross examination, he stated that he knew Cheboi Chemwetich Cheboi, deceased who was their neighbor; the defendant and his family are their neighbours too.
27. DW2 informed the court that the 3rd defendant is a son of the late Chengwong Cheptabus and that the late Changwong Cheptabus and Cheboi Chemwetich Cheboi are not one and the same person.
28. DW2 further informed the court that there were disputes between the plaintiff and the 3rd defendant's family which disputes were resolved by elders. However, he could not tell whether the minutes/ findings of the elders were presented before the land registrar.
29. In re-examination, he stated that the suit property is occupied by the 3rd defendant's family and that the 3rd defendant was born in the suit property.
30. DW3, Hesborn Changwony, relied on his witness statement recorded on 16th October 2023 after it was adopted as his evidence in chief. He produced the documents contained in the 3rd defendant's list of documents filed on 4th February 2019, as Dexbt 3, 4 and 5. He stated that he does not know the plaintiff and Cheboi Chemwetich Cheboi.
31. In cross examination, he stated that he is not aware that the Land Registrar gave evidence to the effect that the suit property initially belonged to Cheboi Chemwetich. According to him (DW3), the suit property was inherited from their grandparents.
32. He stated that he was not aware that the plaintiff in his evidence stated that his father (DW3's father) and the plaintiff are distant relatives.
33. On whether the minutes of the elders meeting (Dexbt 5) were taken to the Land Registrar, DW3 stated that the minutes must have been taken to them as without them, the Land Registrar would not have issued them with a title deed.
34. DW3 further informed the court that he is the one currently living in the suit property. He is 28 years old and was born in the suit property.
35. He acknowledged that the suit property was initially registered in the name of Cheboi Chemwetich but stated that registration of the suit property was changed to his father's name after the meeting held at home, (Dexbt 5).
36. He stated that his father used the right procedure to get the title to the suit property; that his father presented the minutes of the meeting held at their home, presided by elders, to the Land Registrar and was issued with a title deed.



37. On whether his father and Cheboi Chemetich are one and the same person, he stated that his father and Cheboi Chemetich are two different persons.
38. On whether he was aware that the Land Registrar informed the court that his father presented an application saying that Cheboi Chemwetich and he were one and the same person, he stated that he was not aware.
39. He acknowledged that the land registrar works on the documents presented before him.
40. Concerning the minutes of the elders meeting (Dexbt 5), he acknowledged that the minutes did not conclude that the suit property belongs to Changwony family.
41. DW4, Pius Koskei Chelimo, relied on his witness statement recorded on 16th October, 2023.
42. In cross examination, he stated that he is not aware that the elders did not agree on who was the owner of the suit property. According to him, the elders determined that the 3rd defendant is the owner of the suit property but he could not tell whether the minutes of the elders meeting (Dexbt 5), were presented before the Land Registrar.
43. He informed the court that the dispute between the plaintiff and the 3rd defendant over the suit property has been ongoing for over 30 years.
44. He stated that he was not aware that the title to the suit property was in the name of Cheboi Chemwetich before it was re-issued to the 3rd defendant but he knew that the 3rd defendant inherited the suit property from his father (3rd defendant's father).
45. He stated that he does not know Cheboi Chemwetich, the entire plaintiff's family but only knew the 3rd defendant's family.
46. At close of hearing, parties filed submissions which I have read and considered.

The Plaintiff's Submissions

47. In the plaintiff's submissions filed on 4th December 2023, reference is made to the testimony of Robert Sandiki (DW1) and submitted that registration of the suit property was effected in the name of the 3rd defendant owing to his lies that he is the same person as the deceased (Cheboi Chemwetich).
48. The 2nd defendant is faulted for failing to carry out any investigations concerning the 3rd defendant's allegations before making entries of 17th December 2010.
49. Transfer in favour of the 3rd defendant is said to have been effected without consent of the Land Control Board yet the consent of the Land Control Board was a mandatory requirement under Section 6(1) of the [Land Control Act](#), Cap 302 Laws of Kenya.
50. It is pointed out that attempts to arbitrate the dispute between the plaintiff and the 3rd defendant concerning ownership of the suit property were futile but the 3rd defendant is said to have admitted his father's fraudulent moves during cross examination.

The 3rd Defendant's Submissions

51. In his submissions filed on 21st November 2023, the 3rd defendant submits that he is the registered owner of the suit property; that he complied with the law in obtaining title to the suit property and that the plaintiff has not proved his case against him (3rd defendant) on a balance of probabilities.



Analysis and Determination

52. It is not in dispute or otherwise put, it has not been controverted that at the time the 3rd defendant registered a restriction to restrict dealing with the suit property and subsequently got the suit property transferred to him, the suit property was registered in the name of Cheboi Chemwetich Cheboi. According to the evidence of DW1, which evidence was not controverted by the 3rd defendant and/or the 3rd defendant's representative, the 3rd defendant made an application to the Land Registrar purporting that Cheboi Chemwetich Cheboi and himself were one and the same person.
53. According to the evidence adduced in court, it is not true that the 3rd defendant and Cheboi Chemwetich Cheboi are one and the same person. In fact, it turned out that at the time the 3rd defendant presented himself to the Land Registrar purporting that Cheboi Chemetich Cheboi and he are one and the same person, Cheboi Chemwetich Cheboi was deceased, having passed on in 2006.
54. Clearly, the action of the 3rd defendant amounted to a criminal offence under Section 45 of the Law of Succession Act, Cap 60 Laws of Kenya, which proscribes intermeddling with the estate of a deceased person.
55. The title acquired by the 3rd defendant, on account of the proven fraud and/or misrepresentation by him, does not enjoy legal protection under Section 26 of the Land Registration Act, 2012. That being the case, the title is impeachable and a subject for cancellation under Section 80 of the Land Registration Act.
56. That being my view of the case, I find that the plaintiff has proved his case on a balance of probabilities and proceed to enter judgment in his favour and against the 3rd defendant as sought in the plaint.
57. Concerning the prayer for *mesne profits* and/or damages for trespass to land, which in law are one and the same thing, I am satisfied that the plaintiff is entitled to damages for trespass to land.
58. Taking into consideration the circumstances upon which the 3rd defendant purportedly acquired interest in the suit property and the time the 3rd defendant/his family has been in use and occupation of the suit property, illegally, I assess damages payable to the plaintiff at Kshs. 200,000/-.
59. The plaintiff shall have costs of the suit plus interest.
60. Orders accordingly.

JUDGMENT DATED, SIGNED AND DELIVERED AT ITEN THIS 22ND DAY OF JANUARY, 2024.

L. N. WAITHAKA

JUDGE

Judgment delivered virtually in the presence of:-

Mr. Ngala for the Plaintiff

N/A for the Defendants

Christine Towett – Court Assistant

