



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

LAND CASE NO. 63 OF 2012

RODAH CHEMENJO ISAAC

(Suing as personal representative of estate of CHEMOYO ISAAC

DEMONGOLE (deceased).....PLAINTIF

VERSUS

WEST POKOT COUNTY COUNCIL.....1ST DEFENDANT

JULIUS KANDA LEMATUKEI.....2ND DEFENDANT

THE COUNTY OF WEST POKOT.....3RD DEFENDANT

THE ATTORNEY GENERAL.....4TH DEFENDANT

JOHN ARUSHO.....5TH DEFENDANT

PHILIP M. CHEMONGES.....6TH DEFENDANT

GILBERT PKEMOI.....7TH DEFENDANT

MONICA LONYANGA.....8TH DEFENDANT

LOKIAR LOMERINYANG.....9TH DEFENDANT

JOHN MWOK.....10TH DEFENDANT

PLAKA LOMERIMUK.....11TH DEFENDANT

GEOFREY LOKUDO.....12TH DEFENDANT

LIMATUKEI ACHOKOR.....13TH DEFENDANT

JULIUS KANDA LIMATUKEI.....14TH DEFENDANT

VINCENT MERTEKE.....	15 TH DEFENDANT
DANIEL LOMUK.....	16 TH DEFENDANT
MARTIN P. SIREE.....	17 TH DEFENDANT
JOSEPH NGOLEPUS.....	18 TH DEFENDANT
DANIEL K. DAIMOI.....	19 TH DEFENDANT
RICHARD ARAP MAKET.....	20 TH DEFENDANT
SAMWEL KUDOKI.....	21 ST DEFENDANT
JOSEPH ANISOMUK.....	22 ND DEFENDANT
ARIRI LODEA.....	23 RD DEFENDANT

J U D G E M E N T

I N T R O D U C T I O N

1. The plaintiff is the administrator of the estate of her late mother **Chemoyo Isaac Demongole** (deceased) who was the original plaintiff in this case. The deceased was the registered owner of **LR. No. West Pokot/Chepkono/227**. The first defendant is the registered owner of **LR. No. West Pokot/Chepkono/697**. The second defendant was the registered owner of **LR. No. West Pokot/Chepkono/430** which has since been subdivided resulting into **West Pokot/Chepkono/1402 and 1403**.

2. The plaintiff brought this suit against the defendants seeking the following reliefs:-

(i) Nullification of Title No. **West Pokot/Kapsait/697**.

(ii) Rectification of boundaries between **LR. Nos. West Pokot/Chepkono/227 and West Pokot/Kapsait/430**.

(iii) Eviction of the defendants and their servants from **LR. No. West Pokot/Chepkono/227**.

(iv) Costs of the suit.

3. The **6th, 7th, 8th, 10th, 12th, 13th, 14th, 16th and 17th** defendants who were duly served with summons to enter appearance neither entered appearance nor filed defence. The suit against the **2nd, 5th, 9th, 11th, 14th, 18th, 19th, 20th, 21st, 22nd and 23rd** defendants was withdrawn.

4. It is apparent that there was a mistake in the amended plaint. The parcels which are registered in the names of the first and second defendants are indicated as **West Pokot/Kapsait/697** and **West Pokot/Kapsait/430** when they are supposed to be **West Pokot/Chepkono/697** and **West Pokot/Chepkono/430** respectively.

P L A I N T I F F ' S C A S E

5. The plaintiff testified that her late father **Isaac Murkumun Lorek** bought **LR. No. West Pokot/Chepkono/227** from **Samuel Kudo** in **1969**. The land was registered in her father's name. The property later changed into the name of the deceased on **6/4/2011**.

6. In or around 2011, the deceased registered a claim of a boundary dispute with the Land Registrar. The Land Registrar proceeded to the ground and prepared a report dated 9/3/2012. It is the plaintiff's contention that the second defendant had encroached onto **LR. No. West Pokot/Chepkono/227** and that **LR. No. West Pokot/Chepkono/697** which is registered in the name of the first defendant was hived off from her father's land and that it does not exist on the ground.

7. The plaintiff contends that Title Number **West Pokot/Chepkono/697** was fraudulently obtained by the first defendant and that all those persons who have bought parcels from the first defendant are not supposed to own those plots. That they are encroachers who should be evicted from that land and the title nullified.

DEFENDANTS CASE

8. The first and third defendants contend that the plaintiff's claim is misconceived and that it is statute barred. The 4th defendant on its part contends that no claim lies against it. The first, third and fourth defendants called the Land Registrar of West Pokot County. The Land Registrar **Aggrey Kavehi** gave the history of the three parcels as per the records held at the lands office.

ANALYSIS OF EVIDENCE AND ISSUES FOR DETERMINATION

9. The plaintiff contends that LR. No. West Pokot/Chepkono/697 was hived off from her father's land Parcel No. West Pokot/Chepkono/227. This is the case with LR. No. West Pokot/Chepkono/430. The first, third and fourth defendants on their part contend that the three parcels of land in issue were properly created during the process of demarcation and that separate titles were issued to the first and second defendants as well as the title issued to the plaintiff's father which was later transferred to the deceased.

10. I have carefully gone through the pleadings, evidence and submissions of the parties herein. The issues which emerge for determination are firstly whether LR. No. West Pokot/Chepkono/697 and 430 were fraudulently hived off from West Pokot/Chepkono/227. Secondly whether there is any encroachment on LR. No. West Pokot/Chepkono/227 by either LR. No. West Pokot/Chepkono/697 or West Pokot/Chepkono/430. Thirdly, whether the plaintiff's claim is statute barred.

Whether LR. No. West Pokot/Chepkono/697 and 430 were fraudulently hived off from West Pokot/Chepkono/227

11. The plaintiff testified that LR. No. West Pokot/Chepkono/697 and 430 did not exist in the original maps. That Registry Index Map (RIM) Sheet 42 showed that these two parcels did not exist. That they were introduced through subsequent RIMS which are now RIM No. 52 and RIM No. 53. There is absolutely no evidence to support the allegations by the plaintiff. She did not produce RIM No. 42 which she alleges shows that Parcel No. West Pokot/Chepkono/697 and 430 did not exist.

12. The plaintiff particularly singled out LR. No. West Pokot/Chepkono/697 which is registered in the name of the first defendant. She alleged that this parcel was fraudulently created from her father's land. There was no evidence at all to support her allegations. She listed particulars of fraud against the first defendant but there was no iota of evidence adduced to support the same.

13. There is evidence from DW1 Aggrey Kavehi a Land Registrar from West Pokot County. He produced a green card in respect of LR. No. West Pokot/Chepkono/227 [(Defence Exhibit 1)]. The register for this parcel was opened on 3/10/1997. The land was registered in the name of **Murkumun Lorete**, the plaintiff's father. The property later changed into the deceased's name through succession on 6/4/2011.

14. The register for Parcel No. West Pokot/Chepkono/697 was opened on **3/10/1997** and the parcel was registered in the name of the first defendant. The register for parcel No. West Pokot/Chepkono/430 was opened on **12/2/1998** and the parcel was registered in the name of the second defendant. The title for West Pokot/Chepkono/430 was closed on subdivision on **17/6/2010** and it resulted into **West Pokot/Chepkono/1402** which is registered in the name of **Monica Chepokamilot Samuel** and **West**

Pokot/Chepkono/1403 which is registered in the name of **Vincent Kpar Merteke**. The green card for West Pokot/Chepkono/430 was produced as Defence Exhibit 6. The ones for West Pokot/Chepkono/1402 and West Pokot/Chepkono/1403 were produced as Defence Exhibit 7 and 8 respectively.

15. There has never been any objection regarding LR. No. West Pokot/Chepkono/697. There was however an objection raised in respect of LR. No. West Pokot/Chepkono/430. The objection was raised by Loitayara Kamuto but the same was dismissed on 27/10/1992. This is according to the adjudication record produced as Defence Exhibit 3. The adjudication record for West Pokot/Chepkono/697 was produced as Defence Exhibit 2 and it is clear that no objection was raised in respect of this parcel. Titles for West Pokot/Chepkono/430 and 697 were subsequently issued. If there was any claim by the plaintiff's father, it should have been raised before titles were issued.

16. There was an objection raised in respect of LR. No. West Pokot/Chepkono/227 but the same was dismissed with costs on **5/8/1992**. An adjudication record in respect of this parcel was produced as Defence Exhibit 1. If Parcel Nos. West Pokot/Chepkono/430 and 697 had been hived off from LR. No. West Pokot/Chepkono/227, the plaintiff ought to have produced mutations to show that there was subdivision. This evidence was not adduced by the plaintiff.

17. The process leading to creation of LR. Nos. West Pokot/Chepkono/430 and 697 was done in accordance with the provisions of the Land Adjudication Act. I therefore find that neither the first nor the second defendants were involved in any fraudulent activity in as far as acquisitions of their respective titles is concerned.

Whether there is encroachment on LR. No. West Pokot/Chepkono/227 by either LR.No.West Pokot/Chepkono/430 or 697.

18. The plaintiff testified that the deceased had registered a boundary dispute claim with the Land Registrar. The Land Registrar visited the three parcels in issue and prepared a report which was produced as Plaintiff Exhibit 1. The Land Registrar found that the dispute was not a boundary dispute but rather a claim for land. The Land Registrar advised the deceased to file her claim in court. Had the Registrar found that there was an issue of boundary dispute, he would have rectified the boundary in accordance with the provisions of the Registered Land Act Cap 300 (Now repealed).

19. The Land Registrar found that the deceased had a land claim of approximately **0.55 hectares** on parcel No. West Pokot/Chepkono/430 and a claim of **1.39 hectares** on LR. No. West Pokot/Chepkono/697. This the Land Registrar said was in accordance with the submissions of the deceased. The Land Registrar's report was not accompanied by a sketch plan showing the basis of the findings. There was no finding on whether the Registrar found that Parcel No. West Pokot/Chepkono/697 was bigger than it ought to be. This is the case with parcel No. West Pokot/Chepkono/430. There is no indication whether the Land Registrar measured the plots in issue with assistance of surveyors. It is therefore difficult to conclude that there was encroachment onto LR. No. West Pokot/Chepkono/227.

20. **PW4 Henry Lumasayi** is a Surveyor attached to West Pokot County. He is the one who produced the survey report produced as Exhibit 1. He also produced Registry Index Maps Sheet No. 52 and 53. These RIMS contain the three parcels in issue. During cross-examination, he stated that Plot Nos. West Pokot/Chepkono/227 and West Pokot/Chepkono/697 are separated by a road whereas LR. No. West Pokot/Chepkono/430 and 227 are separated by a stream. He stated that if one's land crosses a road or a stream to the other side, there must be a sign which looks like "**S**" to signify that the said land spreads across either the road or the stream. In the instant case, there is no such sign. It therefore follows that the plaintiff's land did not cross the road in relation to Parcel No. West Pokot/Chepkono/697 and the stream in relation to LR. No. West Pokot/Chepkono/430.

21. The Surveyor stated that the parcels on the ground and in the Registry Index Maps produced as Exhibit 7(a) and (b) tallied. He went on to state that there was no encroachment noted on the plaintiff's land. He further stated that the issue of encroachment was a claim by the deceased. Indeed the conclusion

in the report produced as Exhibit 1 found that the issue of encroachment was as per the submissions of the deceased. He was very clear that the deceased was advised to come to court as there was no finding of any encroachment. I therefore find that there is no basis upon which the plaintiff can claim that there was encroachment on to Plot No. West Pokot/Chepkono/227 by either LR. No. West Pokot/Chepkono/430 or 697.

22. There was no finding that the tree stumps on the ground fell on either LR. No. West Pokot/Chepkono/430 or 697. The witnesses who were called by the plaintiff merely narrated on how they marked or saw the father of the plaintiff marking boundaries of his plot using trees known as suwerwa, masat and chorwa. These two witnesses that is PW2 and PW3, did not state whether the boundaries had been changed or not. The surveyor could also not make any finding of encroachment.

Whether the Plaintiff's claim is statute barred

23. The plaintiff testified that Plot Nos. West Pokot/Chepkono/430 and 697 were hived off from Plot No. West Pokot/Chepkono/227. There is evidence that the first defendant was the registered as owner of LR. No. West Pokot/Chepkono/697 on 3/10/1997. The second defendant was registered as owner of LR. No. West Pokot/Chepkono/430 on 12/2/1998. The plaintiff in cross-examination stated that her late father complained about the issue in court in **1987** but that he did not file a case. Her mother started complaining about the issue in **2009**. This case was filed in court on **13/6/2012**.

24. The ***Law of Limitation of Action Act Cap 22*** provides that no person can bring a claim to recover land after a period of **12 years** from the date when the cause of action accrued. In the instant case, even if we were to assume that the cause of action accrued on **3/10/1997** or **12/9/1998**, the plaintiff's suit was filed after expiry of 12 years. It is therefore statute barred and cannot be maintainable. I therefore find that this suit is statute barred.

25. Before I conclude this judgement I must point out that the plaintiff withdrew her claim against the second defendant. The reason for this is that she could not trace the second defendant. It is also important to note that Plot No. West Pokot/Chepkono/430 is non existent. It ceased to exist when title was closed on subdivision on 17/6/2010. This claim was filed after the title had been closed and the property changed hands. Even if the plaintiff were to succeed, I do not see how a court of law would have given a relief in respect of a parcel of land which is legally non existent.

DECISION

26. For the reasons given hereinabove, I find that the plaintiff has not only failed to prove her claim but the same is statute barred. I therefore proceed to dismiss the plaintiff's suit with costs to the first, third and fourth defendants.

Dated, signed and delivered at Kitale on this **31st** day of **October, 2016**.

E. OBAGA

JUDGE

In the presence of Mr. Barongo for 1st and 3rd defendant who is also holding brief for Mr. Odongo for 4th defendant and Mr. Chebii for Mr. Cheptarus for plaintiff.

Court Assistant - Isabellah.

E. OBAGA

JUDGE

31/10/2016.