



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT NAKURU

PETITION 8 OF 2013

KIPSUGUT ARAP MUREIPETITIONER

VERSUS

ATTORNEY GENERAL1ST RESPONDENT

REGISTRAR OF TITLES.....2ND RESPONDENT

MINISTER OF LANDS AND SETTLEMENT.....3RD RESPONDENT

JUDGMENT

(Petition seeking orders to compel Government to issue title to land to petitioner; petitioner claiming that the land was promised to his father and that the land is public land open for allocation; no proof of such promise; no proof that land is public land available for allocation; suit dismissed)

1. This case was commenced by way of a constitutional petition filed on 11 March 2013. The petition is said to be brought vide the provisions of Articles 22, 23, 40, 61 and 63 of the Constitution of Kenya.

2. The case of the petitioner is that he is one of the children of the late Chepsongol arap Cheptoo (deceased) who has been residing within Mbogoini Farm (Mpala) since 1958. It is averred that the deceased was allowed to stay on the land by white settlers to assist in cases of fire and thieves and he settled there with his family of more than 30 members. It is stated that in the year 1999, the petitioner as head of the family tried to get the piece of land registered in his name to hold in trust for the whole family and commenced this process by getting the chief to explain his situation. It is set out that since the year 1999, the petitioner has approached many offices but has received no assistance in having them register the property in his name so that he can hold it in trust for the members of the deceased family. It is averred that this is a violation of the petitioner's clan's right to own the land and have a valid title issued. It is averred that there is no objection from any person and that the neighbouring communities know and recognize the land as belonging to the family of Chepsongol arap Cheptoo.

3. It is stated that the delays in having the land registered in the name of the petitioner puts him at risk of losing his land to someone else, which will render the petitioner and his clan squatters in their own land. It is contended that the respondents have no good reason for failing to register the property into the petitioner's name and are arbitrarily denying the petitioner and his clan the right to own property. It is further contended that the petitioner has not been accorded due administrative procedures and their inaction are a subversion of the spirit and word of the Constitution.

4. In the petition, the petitioner has asked for the following orders :-

- (a) *A declaration that the land known as Mbogoini L.R 10573 belongs to the clan of the deceased Chepsongol arap Cheptoo.*
- (b) *A declaration that the conduct of the respondents in respect of the issue of registration of the said land has been a blatant violation of the petitioner's right to own property.*
- (c) *An order for the registration of the suit parcel of land in the name of the petitioner as trustee of the clan.*
- (d) *An order awarding costs to the petitioner.*

5. The petition is supported by the affidavit of the petitioner. He has stated in the affidavit that in the year 1999, he tried to get the piece of land processed in his name to hold in trust for the family and got the chief to explain the situation. The chief wrote a letter which is annexed to the affidavit. He has deposed that since 1999, he has approached many offices of the respondent, and has received no assistance from them, in having the land registered in his name. He has also annexed what he has called a copy of Mbogoini Farm Sheet No. 105/3 on which he lives with his clan. The other averments in the affidavit are more or less a repetition of what is contained in the petition.

6. There was no response filed by the respondents until 26 June 2015, on the date of the hearing of the petition. This was of course in violation of the rules but Mr. Kipkoech for the petitioner was not averse to the same being allowed on record. The grounds are as follows :-

- (i) *That the petition is incompetent, lacks merit and is misconceived.*
- (ii) *The petition is an abuse of the court process.*
- (iii) *The petition is an afterthought and it seeks to waste the court's time, is incompetent and is an abuse of the court process.*

7. In his submissions, Mr. Kipkoech submitted that the petitioner is about 80 years old and has about 100 descendants settled in the parcel of land. He stated that the father of the petitioner was promised the land and they have been on the land since then. He submitted that this promise has led to a proprietary estoppel falling under Article 40 of the constitution. He submitted that the map annexed to the petition shows that the land is available for allocation. He further submitted that Article 60 provides for equitable distribution of public land and that the petitioner and his clan know no other land.

8. Mr. Mbaka for the State submitted that the petitioner has not provided sufficient proof that the land in issue belonged to a white (Colonial) settler and no proof to confirm the position that the land was left to the petitioner's family. He further submitted that Mbogoini Farmers Society has no capacity to say that this land belongs to the petitioner. He submitted that the Chief's letter is not sufficient proof that the petitioner is son to the deceased, and also pointed out, that the petitioner holds no letters of administration for his deceased father.

9. In reply, Mr. Kipkoech submitted that the exhibits show that the land was owned by a white (colonial) settler and it has never been taken over by anybody. He was of the view that the issues raised are fundamental on squatters residing in former white settler farms.

10. I have considered the matter. The petitioner of course claims that he is entitled to be registered as proprietor of certain land. I have several problems with the petition.

11. When the matter proceeded, I posed the question to Mr. Kipkoech, who owns the land and what there was to show that the land is public land. Mr. Kipkoech's response was that the land is not yet registered and is public land which has not been demarcated nor allocated to date. I have actually not seen anything

to identify exactly what land is being claimed, or how such land is registered, or if not registered, that the land is public land available for allocation.

12. I have looked at the documents relied upon by the petitioner. The first is what was termed as a map sheet showing the land parcel L.R No. 10753 Mbogoini. It is not known who drew that document and neither is it signed. I do not even know what document that can be termed as, as it is not a survey map. To me, it only looks like a rough sketch, presumably of the area in issue. I decline to be guided by a document of such dubious authenticity.

13. The other two documents are letters. The first is a letter from Mbogoini Farmers Company Ltd (Mbogoini FCS) seemingly stamped 26 June 1967. It is written by one A.J Williamson and is addressed "To Whom it may concern". The letter is written through Mbogoini FCS (Mpala Farm) and through the Forester, Kituntaka Forest, Nyahururu. It states as follows :-

"This is to certify that Chepsongol arap Cheptoo was allowed to live within the forest edge of the Kintuntaka bordering with the Mbogoini Farm (Mpala Farm) and graze his animals there.

He began living there from July 1958 upto date, he had made agreement with settlers such as John Williamson to help observe and report cases of fire, thieves of animals and cutting of trees to those concerned. He fulfilled this work satisfactorily without demanding for payment.

He now requests whoever is concerned that he continue settling there as he cannot get any land elsewhere and that the leaders around there accept that he stays there and serves same purpose that according to the agreement made on 5th July 1958.

A.J Williamson

SUBUKIA."

14. The second letter is one written by the Chief, Waseges Location. It is dated 23 June 1999. It is addressed to the Forester, Ol'Arabel F. Station, Nyahururu. It states as follows :-

"Re: Deceased - Chepsongol arap Cheptoo

This is to confirm the above named deceased has been living within "Mbogoini Farm (Mpala Farm)" since the year 1958 and it was confirmed on 26/6/67 by the former owner Mr. John Williamson as per attached letter.

The deceased was allowed to live there to assist the cases of fire, thieves of animals and cutting of trees. He lived there and his families were all born there totaling of (30) thirty or more.

Therefore I request you not to evict them since they have nowhere to live or take the family, since he had small portion of land elsewhere which cannot adequate (sic) the large family he left behind.

Please assist them where necessary.

Yours Faithfully,

P.C Korir, Chief Waseges Location."

15. It is the above letters which the petitioner relies on to prove that he is entitled to the property in issue. But before we go very far, it will be observed that in the petition, what is being sought is inter alia a declaration that the land known as Mbogoini Farm L.R 10573 belongs to the clan of Chepsongol arap Cheptoo. The land is identified and the fact that it has a land registration number means that it has a title. I would have expected a copy of title or search instrument to show under whose name the said land is.

None has been given to me and no document has been tendered before me to show that the petitioner has tried to get this critical information in vain.

16. When I read between the lines, it looks as if the said land may have been the property of Mbogoini FCS, but that the father of the petitioner, was living in the forest edge of the Kituntaka forest bordering the farm. This would mean that Chepsongol was actually not living within Mbogoini Farm, but in the forest, bordering the said farm. This is brought out by the letter of 26 June 1967, and probably that is the reason that the letter is written inter alia through the Forester, Kituntaka Forest. This is buttressed by the Chief's letter which is addressed to the Forester, Ol'Arabel Forest Station. Although the letter of the Chief states that Chepsongol was living within Mbogoini Farm, and refers to the letter of 26 June 1967 as authority, this clearly is not what is set down in the letter of 26 June 1967. If indeed Chepsongol was living within Mbogoini Farm, which must have been owned by some people, there would be no point to address the letter to the Forester.

17. There was a seeming assumption that the land being claimed by the petitioner was once owned by a white colonial settler who has since left and that the land is vacant. I have absolutely no evidence of this. If the petitioner is claiming the forest land, that cannot be said to be land owned by any former white colonial settler. If the petitioner is claiming land that is titled, and was formerly owned by Mbogoini Farm, then this clearly would not be public land, unless it is shown that the same reverted to the State, which has not been demonstrated in this case.

18. The petitioner also claimed to have visited many offices but was not assisted. But apart from the Chief's letter, I have no evidence that he wrote or visited any of the offices of the respondents and sought an explanation as to why the land has not been awarded to him.

19. It will be recalled that Mr. Kipkoech submitted that a promise was made to give the father of the petitioner land, and that there therefore exists a proprietary estoppel. But I have seen no such promise in the exhibits shown by the petitioner. Nowhere has the State ever promised the petitioner or his father any land. There is therefore no violation of any expectation, if ever the petitioner, or his father, was entitled to one.

20. I do not see how it can be said that the State has violated any proprietary rights of the petitioner on the basis of the material before me.

21. This petition is baseless and must be dismissed. It is hereby dismissed with costs.

Dated, signed and delivered in open court at Nakuru this 15th Day of July ,2015.

MUNYAO SILA

JUDGE

ENVIRONMENT & LAND COURT

AT NAKURU

In presence:-

Ms Fatma for petitioner

Mr Mbaka for respondents

Janet : Court Assistant

MUNYAO SILA

JUDGE

ENVIRONMENT & LAND COURT

AT NAKURU