



**Kendagor v Chebon & 4 others (Environment and Land Case  
007 of 2023) [2024] KEELC 1791 (KLR) (25 March 2024) (Judgment)**

Neutral citation: [2024] KEELC 1791 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KABARNET  
ENVIRONMENT AND LAND CASE 007 OF 2023**

**L WAITHAKA, J  
MARCH 25, 2024**

**BETWEEN**

**CHEMITEI KENDAGOR ..... PLAINTIFF**

**AND**

**JOB KIPNANDI CHEBON ..... 1<sup>ST</sup> DEFENDANT**

**MINISTRY OF LANDS ..... 2<sup>ND</sup> DEFENDANT**

**BARINGO COUNTY ..... 3<sup>RD</sup> DEFENDANT**

**KABARNET BARINGO COUNTY ..... 4<sup>TH</sup> DEFENDANT**

**HONOURABLE ATTORNEY GENERAL ..... 5<sup>TH</sup> DEFENDANT**

**JUDGMENT**

1. This suit is in respect of the parcel of land known as Baringo/Kapropita/592 and the subdivisions therefrom namely Baringo Kapropita/606 and 607. Through his pleadings, in paragraphs 6, 7 and 8 of his amended plaint, the plaintiff acknowledges that he sold a portion of the parcel of land known as Baringo/Kapropita/592 to a Mr. Dickson and the 1<sup>st</sup> defendant, Job Kipnandi Chebon.
2. As a result of the sale, Baringo/Kapropita 592 was subdivided into Baringo/Kapropita/606 (for the plaintiff) and 607 for the 1<sup>st</sup> defendant.
3. It is the plaintiff case that the 1<sup>st</sup> defendant unlawfully and without any reasonable excuse/colour of right encroached on his parcel of land, Baringo /Kapropita/606 (hereinafter known as the suit property) and laid sewerage therein.
4. It is the plaintiff's case that the 1<sup>st</sup> defendant fraudulently subdivided the suit into Baringo / Kapropita/705 and 706.



5. The particulars of fraud urged against the 1<sup>st</sup> defendant are particularized in paragraph 13 of the plaint thus:-
  - a. Misrepresenting the plaintiff and signing mutation forms dated 16<sup>th</sup> May,1985 and 14<sup>th</sup> February1985;
  - b. Misrepresenting the plaintiff and signing mutation form dated 23<sup>rd</sup> March 1998 to subdivide Baringo/Kapropita/606 into Baringo/Kapropita/705 and 706;
  - c. Purporting to have attended land control board with the plaintiff when the plaintiff did not attend it so as to be granted consent;
  - d. Purporting to have bought the land which the 1<sup>st</sup> defendant knew or knows that the plaintiff never signed a transfer of the land in issue or sale agreement between the plaintiff and the 1<sup>st</sup> defendant;
  - e. Deliberately and knowingly causing registration of property/land known as Baringo / Kapropita/706 into his name knowing that he had not paid any consideration to the original owner, the plaintiff herein;
  - f. Filing and signing mutation forms purporting to be the rightful owner;
6. The plaintiff also particularized the fraud leveled against the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> defendants thus:-
  - a. Causing registration of transfer of land known as Baringo/kapropita/706 from the plaintiff to the 1<sup>st</sup> defendant without verifying correctness of particulars;
  - b. Fraudulently colluding with the 1<sup>st</sup> defendant to subdivide the parcel of land known as Baringo/ Kapropita /606 into Baringo/Kapropita/705 and 606 without the plaintiff's consent;
  - c. Fraudulently colluding with the 1<sup>st</sup> defendant to further subdivide the parcel of land known as Baringo/Kapropita/706 into intended 869 and 870 as per the mutation form dated 23<sup>rd</sup> March 1998.
  - d. Fraudulently colluding with the 1<sup>st</sup> defendant to subdivide 692 into 606 and 607.
7. In essence, the plaintiff contends that the subdivision of Baringo/Kapropita/606 (the suit property) was done fraudulently.
8. For those reasons the plaintiff seeks judgment against the defendants for:-
  - a. A declaration that the plaintiff is the possessory and beneficial owner of the land in issue;
  - b. A declaration that the 1<sup>st</sup> defendant's registration as owner of 706 was fraudulent and unlawful-registration and subsequent subdivisions, 869 and 870 and/or any other dealing is null and void;
  - c. An order of permanent injunction restraining the 1<sup>st</sup> defendant by himself, his servants and/ or agents from further trespass or interference with the plaintiff's proprietary rights and a mandatory injunction compelling the defendant to forthwith demolish any structures, building fence therein and to vacate the suit land, parcel number 706 and/or including 869 and 870 and in default eviction order do issue.



- d. A mandatory order to 1<sup>st</sup> defendant to execute all necessary transfer documents to effect the registration of the property in the name of the plaintiff failing which the registrar of this court to execute them;
  - e. Costs and interest;
  - f. Any other relief which the court may deem fit and just
9. In his statement of defence dated 16<sup>th</sup> June 2015, the 1<sup>st</sup> defendant refers to paragraph 6 of the originating summons and admits that the plaintiff sold a portion of his land to Dickson who in turn sold the portion to him.
  10. It is the 1<sup>st</sup> defendant's case that the plaintiff applied for and obtained consent from the Land control board and subdivided a portion of parcel 592 into 606 and 607; that the plaintiff transferred parcel 606 to himself and parcel 607 to him (the first defendant); that he bought a portion of parcel 606 from the plaintiff and was assisted by the plaintiff to obtain title for parcel 706 upon subdivision of parcel 606; that he paid 230,000/- to secure a discharge of charge over parcel 606 as additional consideration for the property.
  11. Maintaining that he is the lawful and absolute owner of parcel 706, the 1<sup>st</sup> defendant denies the fraud urged against him and asserts that he acquired the suit property for valuable consideration. In that regard, the 1<sup>st</sup> defendant explains that the suit property was charged to Standard Chartered Bank to secure a loan the plaintiff had acquired using the suit property as security for the loan; that the plaintiff approached him to buy a portion of the suit property after the bank threatened to sell it in exercise of its statutory power of sale; that on the request of the plaintiff, he bought a portion of the suit property (606); that after he bought a portion of the suit property, he effected massive development thereon.
  12. Claiming that the plaintiff has come to court with unclean hands and that the plaintiff's suit discloses no reasonable cause of action against him, the 1<sup>st</sup> defendant urges the court to dismiss it with costs.
  13. The 2<sup>nd</sup> to 5<sup>th</sup> defendants filed a joint statement of defence, dated 24<sup>th</sup> May, 2022 in which they have inter alia given the history of registration of parcel 592 and the subdivisions thereof and aver that in all instances, the 3<sup>rd</sup> and 4<sup>th</sup> defendants acted on duly executed instruments properly lodged for action including registration; that they were not privy to the alleged transactions between the plaintiff and the 1<sup>st</sup> defendant; that they merely implemented instructions from the proprietor the 1<sup>st</sup> defendant; that they acted bona fide and that they cannot be blamed if the plaintiff did not sign the transfer documents as they were not privy to the transactions between the plaintiff and the 1<sup>st</sup> defendant.
  14. When the matter came up for hearing, the plaintiff acknowledged that he had sold the portion occupied by the 1<sup>st</sup> defendant to a Mr. Bukachi (deceased) and that he had sold land to various other persons.
  15. From the evidence adduced in court, it was confirmed that the plaintiff had charged the suit property (parcel number 606) to secure a loan of Kshs. 70,000/- which he had obtained from Standard Chartered Bank.
  16. Whilst the plaintiff and his son, P.W.2 claimed that the plaintiff had used another parcel of land (586) to secure the loan advanced to him, he did not produce evidence capable of proving that fact.
  17. The evidence produced by the 1<sup>st</sup> defendant, which evidence the court finds to be more credible and reliable than the evidence produced by the plaintiff and his witnesses, shows that the plaintiff had charged the suit property (606) to secure the loan that the plaintiff had taken; that the plaintiff defaulted in his obligations to the bank causing the bank to threaten to sell the suit property in exercise of its statutory power of sale; that the plaintiff approached the 1<sup>st</sup> defendant to pay off the amount



he owed the bank; that pursuant to the request made by the plaintiff, the 1<sup>st</sup> defendant paid off the loan the plaintiff owed the bank (Khs 230,000/-); that the suit property was discharged, subdivided and the subdivisions therefrom, 705 and 706 registered in the name of the plaintiff and the defendant respectively.

18. The plaintiff's wife, who testified as P.W.3, acknowledged that her husband had approached the 1<sup>st</sup> defendant to pay off the loan he (plaintiff) owed the bank. The plaintiff's wife informed the court that the plaintiff had promised the 1<sup>st</sup> defendant two plots and told the court that their problem is that the 1<sup>st</sup> defendant took more land, about 4 acres and not 2 plots.
19. From the totality of the evidence adduced in this court, I find as a fact that the 1<sup>st</sup> defendant obtained the suit property (606) pursuant to the arrangement/agreement between him, the plaintiff and the bank which led to the discharge of the charge registered against the suit property.
20. In the circumstances, I find the plaintiff's claim that he did not participate in the process that led to subdivision of the suit property and subsequent transfer of the subdivisions therefrom to be unbelievable.
21. The evidence adduced in this court shows that he had charged the suit property and approached the 1<sup>st</sup> defendant to assist him in fulfilment of his obligations owed to the bank.
22. It is dishonest for the plaintiff to claim that he did not participate in the process that led to discharging of the charge registered against the title to the property when there is evidence from among other witnesses, his own wife, P.W.3, that he approached the 1<sup>st</sup> defendant for the discharge.
23. The upshot of the foregoing is that the plaintiff's claim that the 1<sup>st</sup> defendant obtained title to parcel numbers 606 and the subdivision therefrom to wit 706 has not been proven.
24. Consequently, I dismiss the plaintiff's suit with costs to the defendants.
25. Orders accordingly.

**JUDGMENT DATED, SIGNED AND DELIVERED AT ITEN THIS 25<sup>TH</sup> DAY OF MARCH, 2024.**

**L. N. WAITHAKA**

**JUDGE**

**JUDGMENT DELIVERED ELECTRONICALLY IN THE PRESENCE OF:-**

Mr. Kogo for the Plaintiffs

N/A for the 1<sup>st</sup> Defendant

Ms. Tigoi for the AG (for the 2- 5<sup>th</sup> Defendants)

Court Asst.: Christine Towett

