



**Chepkurgat & another (Suing as the administrators of the Estate of Winfred Chemobo Chepkurgat - Deceased) v Kurgat & another (Environment & Land Case 005 of 2023) [2024] KEELC 1704 (KLR) (19 March 2024) (Judgment)**

Neutral citation: [2024] KEELC 1704 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KABARNET  
ENVIRONMENT & LAND CASE 005 OF 2023**

**L WAITHAKA, J  
MARCH 19, 2024**

**BETWEEN**

**DINA JEMUGE CHEPKURGAT ..... 1<sup>ST</sup> PLAINTIFF  
PATRICIA JEROP KURGAT ..... 2<sup>ND</sup> PLAINTIFF  
SUING AS THE ADMINISTRATORS OF THE ESTATE OF WINFRED  
CHEMOBO CHEPKURGAT - DECEASED**

**AND**

**KIPKEMBOI KURGAT ..... 1<sup>ST</sup> DEFENDANT  
LAND REGISTRAR, KABARNET ..... 2<sup>ND</sup> DEFENDANT**

**JUDGMENT**

1. By a plaint dated 9<sup>th</sup> May 2023 the plaintiffs instituted this suit seeking judgment against the defendants jointly and severally for:-
  1. A declaration that they (the plaintiffs in their capacity as the legal representatives of the estate of the late Winfred Chemobo Chepkurgat are the legal owners of the parcel of land known as Baringo/Kewamoi 'A'/3729 (the suit property);
  2. An order directing the 2<sup>nd</sup> defendant to restore the title for the suit property in their names in their capacity as the legal representatives of the estate of the deceased;
  3. A permanent injunction restraining the 1st defendant by himself, his servants, agents and/or anyone acting under his authority from dealing, constructing, selling, alienating, trespassing, interfering, charging and/or in any other way dealing with the suit property;
  4. Costs of the suit and interests thereon.



2. The suit is premised on the grounds that at all times material to the suit, the suit property belonged to the estate of the deceased, that the defendant by way of fraud illegally and/or irregularly caused the suit property to be transferred to his name.
3. Particulars of the pleaded fraud, illegality and misrepresentation in transfer of the suit property to the defendant are given in paragraph 7 of the plaint thus:-

1<sup>st</sup> defendant

- i. Used forged documents to transfer the suit property to his name;
- ii. Caused the suit property which formed part of the estate of the deceased to be registered in his name without a grant of letters of administration which would have made him the administrator of the deceased's estate;

2<sup>nd</sup> defendant

- i. Purporting to issue certificate of title in the name of the first defendant while knowing and/or he ought to have known that the said person was not using proper documents;
- ii. Allowing himself to be party to a fraudulent transaction while knowing and/or ought to have known that the documents submitted to her/him were a forgery;
- iii. Allowing himself/herself to be a party to a fraudulent transaction while knowing and/or ought to have known that the 1st defendant was not the rightful proprietor or owner of the suit property.

4. Maintaining that the suit property belonged to the estate of the deceased and that the transfer of the suit property to the 1st defendant was unlawful, the plaintiffs filed the instant suit seeking the reliefs listed herein above.
5. The defendants filed statements of defence denying the allegations levelled against them.
6. The plaintiffs filed replies to defence reiterating the averments in their plaint.

## **Evidence**

### **The Plaintiff's Case**

7. When the case came up for hearing the plaintiffs' witnesses, Patricia Jerop Kurgat (P.W.1) and Benjamin Kiptum Sergon (PW2), adduced evidence showing that the suit property was registered in the name of the deceased before it was transferred to the 1st defendant; that at the time the 1st defendant purportedly went to the land control board and obtained consent to transfer the suit property to himself, the deceased was outside the country (in America); that the address indicated in the land control board purported to be that of the deceased is different from the deceased's address and that the original title deed was not surrendered to the Land Registrar as by law required.

### **The Defendant's Case**

8. In his defence, the 1<sup>st</sup> defendant who testified as DW1, claimed that he was given the suit property by the deceased as a gift.



9. The 1st defendant admitted that at the time he obtained the consent of the land control board, the deceased was abroad but claimed that he attended the land control board on behalf of the deceased.
10. The 2nd defendant did not attend court to testify but relied on the green card for the suit property which was produced by consent as her evidence.
11. The green card shows that the suit property was registered in the name of the deceased before it was transferred to the 1st defendant.
12. At close of hearing, parties filed submissions which I have read and considered.

### **Analysis and Determination**

13. From the pleadings, evidence and the submissions, the sole issue for the court's determination is whether the plaintiffs have made up a case for being granted the orders sought (proven their case on a balance of probabilities).
14. As pointed out herein above, the suit property was registered in the name of the deceased person herein before it was transferred (registered in the name of the 1st defendant).
15. The suit property was registered in the name of the deceased on 26th February 2015. A title deed was issued to the deceased on 16th June 2018.
16. On 4th May 2018, the suit property was registered in the name of the 1st defendant. It is noteworthy that at the time the suit property was registered in the name of the 1st defendant, the deceased had passed on. According to the certificate of death for the deceased, Pexbt 2, the deceased died on 26th March 2017.
17. The title deed issued to the deceased, which was produced in evidence as Pexbt 3, was not surrendered to the land's office when registration of the 1<sup>st</sup> defendant as the proprietor of the suit property was done.
18. There being evidence that the 1st defendant acquired his title at a time when his predecessor in registration of the suit property was deceased, the burden was on the 1st defendant to demonstrate that he lawfully and procedurally obtained title to the suit property. That burden was not discharged.
19. I find the pleaded fraud, illegality, irregularity and misrepresentation of the suit property to the 1<sup>st</sup> defendant to have been proven in that the transfer of the suit property was done when the owner was deceased without representation of his estate been done as by law required. That being the case, the title held by the 1<sup>st</sup> defendant is impeachable under Section 26 of the [Land Registration Act](#), 2012 on account of the fraud, illegality and want of procedure in the acquisition of title held by the 1<sup>st</sup> defendant in respect of the suit property.
20. Having found the title held by the 1<sup>st</sup> defendant to have been acquired fraudulently, illegally and unprocedurally in exercise of the powers conferred on this court under Section 80 of the [Land Registration Act](#), 2012, I cancel it and order rectification of the register of the suit property to accord with the outcome of this suit.
21. The upshot of the foregoing is that the plaintiffs have made a case for being granted the reliefs sought which I hereby grant them as prayed as prayed in the plaint dated 9<sup>th</sup> May 2023.
22. Orders accordingly.

**JUDGMENT DATED, SIGNED AND DELIVERED AT ITEN THIS 19<sup>TH</sup> DAY OF MARCH, 2024.**

**L. N. WAITHAKA**



## **JUDGE**

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

Mr. Kibet for the Plaintiff

NA for the 1<sup>st</sup> Defendant

Ms. Tigoi for the 2<sup>nd</sup> Defendant

Court Asst.: Christine

