



**Kibor & 3 others v Vincent Chemweno, the Chairman Board of Management, Kamosong Primary School (Environment & Land Case 31 of 2022) [2024] KEELC 1576 (KLR) (18 March 2024) (Judgment)**

Neutral citation: [2024] KEELC 1576 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT ITEN  
ENVIRONMENT & LAND CASE 31 OF 2022**

**L WAITHAKA, J  
MARCH 18, 2024**

**BETWEEN**

**PRICILA KIBOR ..... 1<sup>ST</sup> PLAINTIFF  
EUNICE MAINA ..... 2<sup>ND</sup> PLAINTIFF  
SAMUEL K. KONDOGUT ..... 3<sup>RD</sup> PLAINTIFF  
BENSON KIPLAGAT ..... 4<sup>TH</sup> PLAINTIFF**

**AND**

**VINCENT CHEMWENO, THE CHAIRMAN BOARD OF MANAGEMENT,  
KAMOSONG PRIMARY SCHOOL ..... DEFENDANT**

**JUDGMENT**

1. By a plaint dated 2<sup>nd</sup> December, 2016 the plaintiffs herein instituted this suit seeking judgment against the defendants for an order of permanent injunction to restrain the defendant, his agents, employees and/or servants from trespassing, alienating, transferring and/or doing anything that may interfere with their titles to the parcels of land known as Mosop/Lelboinet/337, 386, 387 and 710 (hereinafter referred to as the suit properties); a declaration that the defendants’ claim to the suit properties is misleading, without legal foundation and made in bad faith and that the plaintiffs are the rightful owners of their respective parcels of land.
2. The suit is premised on the grounds that at all times material to the suit, the plaintiffs were either the registered proprietors of the suit properties or the personal representatives of the owners of the suit properties; that there were negotiations between the plaintiffs and the defendants for the plaintiff to conditionally cede parts of the suit properties to Kamosong Primary School (hereinafter referred to as the school); that the negotiations did not materialize as the plaintiffs were not compensated with other parcels of land as contemplated in the negotiations.



3. The plaintiffs accuse the defendants of harbouring an intention to forcefully take over their parcels of land without following the laid down procedure.
4. Terming the defendant (school) a trespasser to their land, who should be enjoined from laying claim on the suit properties, the plaintiffs instituted the instant suit seeking the reliefs listed herein above.
5. The defendant filed a statement of defence and counterclaim dated 5<sup>th</sup> November 2018 that:-
  - i. The plaintiff's suit be dismissed with costs.
  - ii. The defendant counter claim be allowed and orders issued as prayed under paragraph 7,8,9 and 10 of the counter claim
  - iii. An order of cancellation of the plaintiff's titles to land parcels Mosop/Lelboinet/386 and 710 and or in the alternative the court do order that 2 acres each be carved out of land parcels mosop/lelboinet/386 and 710 and be registered in the name of the defendant school.
  - iv. An order that the alleged subdivision of land known as Mosop/lelboinet.335 into two portions by the 4<sup>th</sup> plaintiff herein be declared null and void ad the resultant parcels numbers Mosop/lelboinet/710 and 711 be cancelled forthwith.
  - v. An order that the defendant school herein be declared as one of the legal beneficiaries to the estate of Cheptum Maina and Joel Kibor Chebolet to wit the court do order that 5 acres be carved out of each estate comprised in land parcels known as Mosop/lelboinet/337 and 338 and be registered in the name of the defendant school.
  - vi. That there be a rectification of the register to reflect what is stated in c, d and e above.
  - vii. That upon rectification of register to reflect what is sated in c, d and e above a Permanent injunction do issue restraining the plaintiffs herein from laying any claim and/or interfering in any manner to the a foresaid parcels.
  - viii. General damages for trespass on the defendant's land from the date of exchange to date.
  - ix. Mesne profit.
  - x. Costs of the suit
6. The plaintiffs filed a reply to defence and defence to counterclaim dated 2<sup>nd</sup> November 2017 reiterating their pleaded case. The plaintiffs further averred that the school was given 4.5 acres of land by their parents; that their parents were compensated for the 4.5 acres donated and that there is no binding agreement/relationship between the school and the plaintiffs.
7. According to the plaintiffs, their parents were compensated in respect of the 4 acres donated, comprised in Mosop/Lelboinet/384, but not in respect of of the suit properties.
8. It is the plaintiffs' case that they are not challenging any agreements between them and the school as none exist.
9. When the case came up for hearing the parties led evidence which can be summarized as follows:-



## EVIDENCE

### Plaintiff's Case

10. Priscilla Chemutai Kibor, informed the court that he does not know when the school was established; that she found the school in existence when she got married; that she claims parcel number 387; that she does not know its size but knows where the boundaries are; that her husband did not attend any community meeting regarding the land and that her husband does not have any other land (does not have land in Kapkoi Settlement Scheme).
11. further informed the court that they have land in Kahungura Settlement Scheme, plot No. 218 measuring 10 acres; that her husband purchased it (plot No.218) on loan through a group called Ushirika; that her husband never gave any land to the school; that that sometime in 2016, the school BOM chairman, Vincent Chemwono, came with a surveyor and hived off 4 acres from land parcel 387 and because they had security, she did not stop them.
12. In re examination, P.W.1, maintained that they fully paid for plot No.218 Kahungura Settlement scheme hence the parcel was not exchanged with plot No. 387.
13. Eunice Maina, informed the court that she claims plot 337; that they have land in Kahungura Settlement Scheme-10 acres; that it is not true that the land in Kahungura Settlement Scheme was exchanged with plot No. 337.
14. Samuel Kiprop Kondogut, informed the court that he has title for plot No. 386 which he claims was given to him by his father; that he produced the title deed issued to him on 14th December 1993 as Pexbt 10; that his father donated the school parcel number 384 and was compensated with land in Kitale.
15. He urged the court to order the school to vacate plot No. 386 or to compensate him.
16. Benson Kibet Kiplagat, told the court that he claims plot No. 710; that the defendant did not compensate his mother with another parcel of land and that his mother bought plot number 438. Further, that the parcel number 710 was registered in his mother's name on 5<sup>th</sup> December 2002. He produced the title deed and official search in respect of the suit property as Pexbt 13 and 14 respectively.
17. In cross examination, he stated that his mother died in 2008; that he was issued with grant of letters of administration ad litem; that the school was established in 1960s; that his father died in 1980s; that plot No. 710 is 7 acres; that the school encroached on ½ an acre of plot No. 710; that he has not measured the area encroached but he knows where the beacons are.
18. He further informed the court that his mother informed him that his father gave the school 3 ½ acres of land.

### Defendant's Case

19. D.W.1 Vincent Chemwono, informed the court that he was the Chairperson Kamosong Primary School Board of Management (BOM) between 2012 and 2019; that the school is built on plot number 333 measuring 4.5 acres; that the school started in 1966 as a nursery school and that the history of the school and its activities is recorded in a book, Dexbt 1; that the school wanted to expand and towards that end, certain families donated land and got compensated as follows:- Senego Kiplagat 2 acres out of plot 335, Kapkuros Morogo 2 acres, Cheptum Maina 4 acres, and Joel Kibor 4 acres; that Joseph Kibor who is represented by the 1<sup>st</sup> plaintiff was compensated with plot No. 218 and that despite having being



compensated, some of the children of the donor live on the land donated by their father and in respect of which their father was compensated; that Cheptum Maina who is represented by the 2<sup>nd</sup> plaintiff ceded 4 acres and was compensated with land elsewhere; that despite Cheptum Maina having been compensated with land elsewhere, some of his family members live on the exchanged land, plot No. 337; that some of the family members of Cheptum Maina's live in the exchanged land in Kahungura Settlement Scheme; that the 3<sup>rd</sup> plaintiff is a member of the family of Kapkoros Morogo who ceded a portion of plot No. 386 and got compensated with land elsewhere; that the 3<sup>rd</sup> plaintiff lives in land parcel number 384 but has encroached on 386 (he has built a house therein); that the 4<sup>th</sup> defendant is a son of Semego Kiplagat who ceded 2 acres out of land parcel number 335; that the school took possession of the portion ceded from parcel number 335 and has built 4 classrooms therein.

20. D.W.1 further informed the court that the 4<sup>th</sup> plaintiff has subdivided plot number 335 but other than plot No. 710 does not know the other resultant parcels; that the person who purchased plot No. 710 has some structures on it.
21. Based on minutes of 13<sup>th</sup> July, 1990 found in the extracts of Dexbt 1, particularly Min 10/1990, paragraph 2 Min 9/1990, he stated that the school was paying money into the settlement scheme which was government land.
22. D.W.1 further stated that the plaintiffs did not buy the land; that the land was given to their fathers in exchange of the land they surrendered and that there were no disputes between the school and the original owners of the school. He produced the following documents in support of the defendants' case:-
  - i. Chief's letter dated 5<sup>th</sup> July, 2016 (Marichor)(Dexbt 2)
  - ii. Charge in respect of plot No. 438 (Dexbt 3);
  - iii. Allocation letter dated 14<sup>th</sup> February, 1984 (Dexbt 4);
  - iv. Allocation of settlement plot dated 3<sup>rd</sup> October, 1983 (Dexbt 5);
  - v. Charge for plot No.390 (Dexbt 6);
  - vi. Allocation letter for plot No. 390 dated 4<sup>th</sup> January, 1984 (Dexbt 7);
  - vii. Allocation of settlement for plot No. 390 dated 3<sup>rd</sup> October, 1983 (Dexbt 8);
  - viii. Charge for plot No. 218 (Dexbt 9);
  - ix. Charge for plot No.219, (Dexbt 10);
  - x. Letter of consent for plot 219 dated 20<sup>th</sup> June 2000 (Dexbt 11);
  - xi. List of plot holders (Dexbt 12);
  - xii. Letter by the office of the County Coordinator dated 5<sup>th</sup> October 2017 (Dexbt 13);
  - xiii. Letter dated 27<sup>th</sup> May, 2008 (Dexbt 14);
  - xiv. Letter from Kamosong Primary School dated 13<sup>th</sup> April, 2016 (Dexbt 15);
  - xv. Letter from DLASO dated 18<sup>th</sup> April, 2016 (Dexbt 16);
  - xvi. Minutes of a meeting held on 11<sup>th</sup> April, 2016 (Dexbt 18);
  - xvii. Compensation agreement dated 17<sup>th</sup> August, 2016 (Dexbt 19);



- xviii. Letter from the office of the County Coordinator dated 13<sup>th</sup> December, 2017, (Dexbt 20) and
- xix. Letter from Ministry of lands dated 31<sup>st</sup> May, 2016 (Dexbt 21).
23. He urged the court to cancel the titles held by the plaintiffs.
24. D.W.2 Josephine J. Cherutich, informed the court that she was the headteacher Kamasong Primary School since 2020; that the school is built on plot No. 333 which was previously occupied by Presbyterian Church of East Africa (PCEA) church; that plot No.390 Kapkoi Scheme belongs to Kapkoros Morogo; that parcels No. 218 and 219 Kahungura Settlement Scheme belong to Joel Kibor Cheburet and Cheptum Maina respectively; that there is no indication in the school record that the persons who were given land in the schemes were paying for it themselves; that she is not aware of Pexbt 1-4; that there are receipts in the school's records book (Dexbt 1) showing that the school was making payments to Settlement Fund Trustees (SFT) and that there are minutes in the record book (Dexbt1) of meetings where the donors and the school sat and discussed about surrender of their land to the school.
25. She could not tell if there was a sale agreement and/or whether the minutes were forwarded to SFT about the exchange of land between the donors and the school.
26. D.W.2 further informed the court that the plaintiffs still occupy the parcels in dispute, 12 acres, which the school is claiming; that there is no dispute over the 4.5 acres occupied by the school.
27. In re-examination, D.W.2 informed the court that the plots in Kapkoi and Kahungura scheme belong to the plaintiffs; that plots in Kapkoi and Kahungura Settlement Schemes were exchanged by the plaintiffs' grandfathers with the land in dispute in 1980s; that for every 1 acre surrendered the plaintiffs were compensated with 2 acres and that the school is claiming the land based on the exchange which took place.
28. D.W.3 Micah Kipkosgei Kapkoros, a grandchild of Kapkoros Morogo, informed the court that part of parcel number 386 measuring 2 acres was given to the school; that the balance of 1.5 acres was to belong to him; that his grandfather was given 5 acres in Kapkoi Settlement Scheme (plot No.390-Dexbt 19); and that he lives in the land exchanged for parcels No. 386, parcel 390.
29. He further informed the court that part of the loan in respect of parcel number 390, Kshs. 625/- was paid by the school.
30. In cross examination, he stated that the 3<sup>rd</sup> plaintiff chased them (his mother and he) from parcel number 386 because he claimed that traditionally girls cannot inherit land.
31. Concerning payments made by the school referred to in Min. 10/1990 in the school register (Dexbt 1), he stated that the payment was for parcel No.386.
32. In re-examination, he reiterated that the 5 acres he was given in the Settlement Scheme were in exchange for the 2 acres surrendered to the school.
33. D.W.4 Benjamin Kipkosgei Rutto, a farmer and a pastor at PCEA Kamosong, informed the court that PCEA Church is the sponsor of the school; that in 1981 there was need to expand the school (to built dormitories); that the School Board of Governors approached Semego Kiplagat who donated 2 acres from plot No. 335 in exchange of 5 acres in plot No.438 Kapkoi Settlement Scheme; that Kapkoros Morogo surrendered 386 in exchange of 5 acres in plot No.390 Kapkoi Settlement; and that Cheptum Maina surrendered 4 acres out of parcel number 337 in exchange of 5 acres in plot No.219 Kapkoi



Settlement Scheme. Further that Joel Kibor surrendered 4 acres out of plot No.387 in exchange of 10 acres in plot No.218 Kahungura Settlement Scheme.

34. D.W.4 further informed the court that he is aware of the compensation agreement, Dexbt 19, signed between the donors or their representatives.
35. He urged the court to order that all the parcels of land donated by the original owners be returned to the school and any titles issued to any person other than the school be cancelled.
36. D.W.5 Nelson Kipsabit, a retired Senior Chief, informed the court that Kamosong Primary School is in his area of jurisdiction; that he is aware that in 1980s the School Board of Governors passed a resolution that there was need to expand the school; that they invited stakeholders and neighbours of the school to the meeting and that neighbours of the school agreed to donate their land to the school and be compensated by government. His evidence on the donation is in pari materia to that of D.W.4.
37. He further stated that the plaintiffs in the instant suit were not parties to the agreement/negotiations; that he is aware of Min No. 9 of 1981 in Dexbt 1. He stated that during that time, it was normal for schools to approach neighbours for land for expansion and that neighbours who agreed to exchange their land would be compensated with 2 acres for each acre surrendered and an additional acre for disturbance; that the persons who surrendered their land were happy with the arrangement and that they did not raise any objection to the arrangement/agreement.
38. He further stated that the school took possession and fenced off the land; that the plaintiffs complained to the police and repossessed the land.
39. According to D.W.5, costs of compensation in respect of the land were shared between the school and the persons being compensated. In that regard, the school paid Kshs. 625/-.
40. D.W.5 further informed the court that in a meeting held on 13<sup>th</sup> July 1990, which he attended, they informed the committee that they had visited the Settlement Scheme and paid money for the respective owners.
41. He maintained that the original owners of the land claimed by the plaintiffs were compensated. He urged the court to order that the land donated to the school, 12 acres which the school is claiming, be returned to the school.
42. At close of hearing parties filed submissions, which I have read and considered.

### **Submissions**

43. From the pleadings, evidence and the submissions the issues for the court's determination are:-
  - i. Whether there existed land exchange agreements between the plaintiffs and/or the plaintiffs' predecessors in claim to the suit properties and the defendant, Kamosong Primary School;
  - ii. Whether the agreement for exchange of land was acted upon/implemented?
  - iii. Whether either of the parties has made up a case of being granted the orders sought or any of them;
  - iv. What orders should the court make?

### **Plaintiffs Submissions**

44. On whether there existed land exchange agreements between the plaintiffs and/or the plaintiffs' predecessors in claim to the suit properties and the defendant, Kamosong Primary School, in their



submissions filed on 9<sup>th</sup> February 2024, the plaintiffs have pointed out that it is not in dispute that they (the plaintiffs) are the registered proprietors of the suit properties (the parcels of land known as Mosop /Lelboinet/386, 387 and 710) and that the defendant was negotiating with the owners of the suit properties to conditionally cede portions of the suit property to the School.

45. The plaintiffs acknowledge that the defendant is in use and possession of portions of the suit properties alleged to have been exchanged with other parcels of land elsewhere but term the possession trespass to land.
46. Based on the fact that the plaintiffs are the registered owners of the suit properties, reference is made to Section 26 of the [Land Registration Act, 2012](#) and submitted that the plaintiffs' are entitled to the reliefs sought.
47. Maintaining that they were not compensated as claimed by the defendant, the plaintiffs submit that the defendant did not prove that the suit properties were exchanged with other parcels. According to the plaintiffs, the parcels of land they are said to have been compensated with were paid for by their predecessors in claim.

### **Defendant's Submissions**

48. In its submissions filed on 9<sup>th</sup> February 2024, the defendant acknowledges that the plaintiffs' are the registered owners of the properties they claim to be entitled to but submits as follows concerning the plaintiffs' registration as proprietors of the suit properties:-
  - i. That registration of the 3<sup>rd</sup> plaintiff as the registered owner of the parcel of land known as Mosop/Lelboinet/386 was done fraudulently and without following the laid down procedure;
  - ii. That subdivision of the parcel of land known as Mosop/Lelboinet/335 into Mosop/Leiboinet 710 and 711 was done secretly, fraudulently, illegally and without knowledge of the defendant;
  - iii. That the defendant is still in occupation of a portion of the parcel of land known as Mosop/Leiboinet/335;
  - iv. That the plaintiffs have in their plaint, admitted that portions of the suit properties were donated to the school hence cannot claim to be the absolute owners of the suit properties;
  - v. That the plaintiffs' possession of the suit properties, which the defendant has enjoyed for a long period of time, since 1981, is an overriding interest to the title held by the plaintiffs. In that regard reference is made to the case of *Mwangi & Another V. Mwangi (1986)e KLR*, where it was inter alia held that rights of a person in possession or occupation of land are equitable rights which are binding on the land;
  - vi. That the plaintiffs' have not proved the pleaded trespass to land against the defendant;
  - vii. That the plaintiffs' claim against the defendant is time barred as it ought to have been brought in 1985 or at very least in 1997;
  - viii. That on account of the suit having been statute barred, the orders sought cannot be granted in favour of the plaintiffs; and
  - ix. That the plaintiffs have not made up a case for being granted the orders sought as such, their case ought to be dismissed with costs to the defendant.
49. On whether there existed a land exchange agreement between the plaintiffs and the defendant school, reference is made to paragraphs 5, 7, 8, 9, 10 and 12 of the plaint and submitted that through those



sections of their pleadings, the plaintiffs have conceded that there were some exchanges of parcels of land. It is pointed out that what is in dispute is the acreage that was donated by the original land owners.

50. Terming the testimonies of P.W.1, 2, 3 and 4 to the effect that the intended negotiation between the plaintiffs and/or the plaintiffs' predecessors in claim to the suit property did not occur and that the suit properties were never exchanged with other parcels of land as claimed by the defendant a ploy calculated at misleading the court, the defendant submits that the plaint and the testimonies tendered for and on behalf of the plaintiffs, buttresses the defendant's counterclaim.
51. The defendant is said to have demonstrated, beyond peradventure, that indeed negotiation about land exchange did occur between the defendant school and the original owners of the suit properties.
52. The testimonies of D.W.1, 3, 4 and 5 are said to have proved the pleaded exchange of land between the plaintiffs' predecessors and the defendant school. The testimonies of D.W.1, 3, 4 and 5 are also said to have proved that the plaintiffs were compensated with land elsewhere. In particular, the plaintiffs' predecessors in entitlement to the suit properties are said to have been compensated with land in Kapkoi and Kahungura Scheme namely plots Nos. 438 and 390 (in Kapkoi) and plots Nos. 219 and 218 in Kahungura Settlement Schemes
53. The defendant is said to have taken over 12 acres of land comprised in the suit properties. That fact is said to have been laid bare by the testimony of D.W.5 and the defendant's minutes book which was produced in evidence as Dexbt 1.
54. Terming the plaintiffs' testimonies to be at variance with their pleaded case, based on the evidence adduced in support of the defendant's case and the conduct of the plaintiffs, the defendant urges the court to find that the defendant has proved its pleaded case on a balance of probabilities and grant it the orders sought.
55. On validity or otherwise of the verbal arrangement which existed between the plaintiffs' predecessors in claim to the suit property and the defendant, it is pointed out that the agreement was made before the Law of Contract Act was amended to require that contracts for disposition of land be in writing hence not invalidated by want of compliance with Section 3(3) of the Law of Contract Act. In that regard, it is asserted that the oral agreement between the plaintiffs predecessors in entitlement to the suit properties were made in 1980s way before the Law of Contract Act was amended in 2003. In that regard, reference is made to the case of Anderson Omondi Owandho (suing as legal representative of the Estate of Thomas Owandho Rajwai (Deceased) versus Augustinos Ondiek (2017)e KLR where it was inter alia held:-  
  
“...Section 3(7) of the Law of Contract Act makes exception to oral contracts for sale of land coupled with part performance. Section 3(3) of the Law of Contract Act having come into effect in 2003 does not apply to an oral contract for sale (or exchange) of land concluded before it came to effect...”
56. It is pointed out that the defendant pleaded that the plaintiffs' registration as proprietors of the suit properties is subject of a trust in its favour and submitted that registration of the plaintiffs as proprietors of the suit properties is subject of an unregistered trust in favour of the defendant and that the defendant proved the pleaded trust.
57. Arising from the foregoing, it is submitted that the defendant has made up a case for being granted the orders sought.



### **Analysis and determination**

58. As to whether there existed land exchange agreements between the plaintiffs and/or the plaintiffs' predecessors in claim to the suit properties and the defendant, Kamosong Primary School, Having carefully considered the totality of the evidence adduced in this case, I do find as a fact that there existed a land exchange programme between the plaintiffs' predecessors in claim to the suit property. I do also find as a fact that arising from the agreement the plaintiffs' predecessors in entitlement to the suit properties were compensated with land elsewhere, in Kahungura and Kapkoi Settlement Schemes.
59. On whether the agreement for exchange of land was acted upon/implemented, my answer is in the affirmative.
60. As to whether either of the parties has made up a case of being granted the orders sought or any of them, having determined that the defendants have proved that the land in dispute was exchanged for other parcels of land, which parcels are currently held and/or registered in the name of the plaintiffs' and/or their predecessors in entitlement, I find and hold that the defendant has made up a case for being granted the orders sought in their counterclaim, dated 14<sup>th</sup> June 2016 which, apart from the prayer for general damages for trespass on to the defendants' land, the prayer for mesne profit and costs, I hereby grant them as sought.

**JUDGMENT DATED, SIGNED AND DELIVERED AT ITEN THIS 18<sup>TH</sup> DAY OF MARCH, 2024.**

**L. N. WAITHAKA**

**JUDGE**

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

Ms. Otuma holding brief for Mr. Chemwok for the plaintiff

Mr. Koross for A.G holding brief for Ms. Odeyo for defendant

Court Asst.: Christine

