



**Kirui & 3 others v Kigen & another ((Sued in their own capacities and on behalf of Kapkenda Farmers Club as Chairman, treasurer, and secretary respectively.)) (Environment & Land Case 300 of 2014) [2024] KEELC 3432 (KLR) (30 April 2024) (Judgment)**

Neutral citation: [2024] KEELC 3432 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT ELDORET  
ENVIRONMENT & LAND CASE 300 OF 2014**

**EO OBAGA, J  
APRIL 30, 2024**

**BETWEEN**

**RICHARD RUTO KIRUI ..... 1<sup>ST</sup> PLAINTIFF  
DAVID KIPROTICH KURGAT ..... 2<sup>ND</sup> PLAINTIFF  
CHEMITEI JOSEPH ..... 3<sup>RD</sup> PLAINTIFF  
EDWARD LIMO CHEBOR ..... 4<sup>TH</sup> PLAINTIFF**

**AND**

**PHILIP KIPTOO KIGEN ..... 1<sup>ST</sup> DEFENDANT  
BARTILOL KOMEN ..... 2<sup>ND</sup> DEFENDANT  
(SUED IN THEIR OWN CAPACITIES AND ON BEHALF OF KAPKENDA FARMERS CLUB AS CHAIRMAN, TREASURER, AND SECRETARY RESPECTIVELY).**

**JUDGMENT**

1. The Plaintiffs filed a further amended plaint dated 14.12.2023 in which they sought the following reliefs: -
  1. A declaration that the Plaintiffs are jointly and severally the beneficial owners of 0.292 acres, 0.167 acres, 0.167 acres and 0.167 acres respectively to be excised from Pioneer/Ngeria Block 1 (EATEC)/601 which parcel of land is registered in the names of the defendants and for an order that the defendants do surrender the title for subdivision to enable the plaintiffs to obtain their titles.



2. A declaration that each of the plaintiffs is entitled to their respective shares of land out of LR no Pioneer/Ngeria Block (EATEC)/601 and that the title held by the defendants be nullified and in lieu thereof new titles be issued as follows: -
    - i. Richard Ruto Kirui – 1.5 acres
    - ii. David Kiprotich Kurgat – 1.0 acres
    - iii. Chemitei Joseph – 1.0 acre
    - iv. Edward Limo Chebor – 1.0 acre
    - v. Remainder portion of 0.5 of an acre to cater for Advocates fees.
  3. An order that the Deputy Registrar of this court executes the transfer on the part of the defendants.
  4. An order that any other titles out of Pioneer/Ngeria Block 1 (EATEC)/601 issued to any other third parties, if any be nullified.
  5. Costs and interest at court rates.
  6. Any other further reliefs that this Honourable court may deem fit to grant.
2. The plaintiffs and the defendants were members of Kapkenda Farmers Club. The members contributed money which was used to buy land which was later subdivided and shared among the members according to their shareholding.
  3. The officials of Kapkenda Farmers Club purchased land at Kilima 1, Kilima II and Growel Farm which was distributed to members. There arose disputes among members and the officials over use of funds. The amount which was found to be with the officials was used to purchase LR no Pioneer/Ngeria Block 1 (EATEC)/601 measuring 5 acres. The defendants who were officials had the land registered in their names.
  4. The first plaintiff testified that he had contributed a sum of ksh 65,000/= for shares in the farms purchased by the officials. He was given land at Kilima Farm worth 7,500/= He was refunded ksh 40,000/= leaving a balance of ksh 17,500/= He stated that as Kilima Farm I and II as well as Growel Farm had ben distributed fully, the only available land remaining was the 5 acres comprised in LR no Pioneer/Ngeria Block I (EATEC)/601.
  5. The second, third and fourth plaintiffs had each contributed ksh 10,000/= which was equivalent to two shares each of ksh 5,000/= which was equivalent to two acres for each. As Pioneer/Ngeria Block1 (EATEC)/601 was not enough to be shared amongst the four plaintiffs, they agreed that the first plaintiff was to have 1.5 acres and each of the second, third and fourth plaintiffs were to have one acre each. The remainder of 0.5 of an acre was to go to their Advocate as fees.
  6. The first and fourth plaintiffs testified that their documents got burnt in their respective houses and they obtained Police abstracts to that effect.
  7. The defendants who were duly served neither entered appearance nor field a defence. The suit therefore proceeded by way of formal proof. I have looked at the documents filed by the plaintiffs in support of their case. A copy of certificate of official search shows that the suit property is registered in the names of Philip Kiptoo Kigen, Bartilol Komen and John Kiptoo Chebii. The tile was issued in the names of the three on 19.10.2006.



8. The three registered owners are said to be officials of Kapkenda Farmers Club. It is not known why as officials, they had themselves registered as owners of the suit property which was supposed to be distributed to the members of Kapkenda Farmers Club. The evidence of the plaintiffs is uncontroverted. This being the case, I find that the plaintiffs have proved their case on a balance of probabilities. I consequently enter judgment for the plaintiffs as follows: -
1. A declaration that the plaintiffs are the beneficial owners of 0.292 acres, 0.167 acres, 0.167 acres and 0.167 acres respectively to be excised from Pioneer/Ngeria Block 1(EATEC)/601.
  2. The title in respect of LR no Pioneer/Ngeria Block 1(EATEC)/601 which is in the names of Philip Kiptoo Kigen, Bartilol Komen and John Kiptoo Chebii is hereby cancelled and the land Registrar Uasin Gishu County is directed to process titles as follows:-
    - i. Richard Ruto Kirui – 1.5 acres
    - ii. David Kiprotich Kurgat – 1.0 acre
    - iii. Chemitei Joseph – 1.0 acre
    - iv. Edward Limo Chebor – 1.0 acre
    - v. Evans Ogeto Miyienda 0.5 of an acre.
  3. The Deputy Registrar of this court is authorized to sign all necessary documents to ensure that the beneficiaries listed in (2) above get their individual titles.
  4. Costs and interest at court rates.

**DATED, SIGNED AND DELIVERED AT ELDORET ON THIS 30<sup>TH</sup> DAY OF APRIL, 2024.**

**E. O. OBAGA**

**JUDGE**

In the virtual presence of;

Mr. Miyienda for Plaintiffs

Court Assistant –Laban

**E. O. OBAGA**

**JUDGE**

**30<sup>TH</sup> APRIL, 2024**

