



REPUBLIC OF KENYA



**Chepkorir & another v Langat & another (Environment & Land Case
11 of 2016) [2025] KEELC 191 (KLR) (30 January 2025) (Ruling)**

Neutral citation: [2025] KEELC 191 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KERICHO
ENVIRONMENT & LAND CASE 11 OF 2016
LA OMOLLO, J
JANUARY 30, 2025**

BETWEEN

CHRISTINE CHEPKORIR 1ST PLAINTIFF

CECILIA CHEPKIRUI A TEMBUR 2ND PLAINTIFF

AND

BENJAMIN LANGAT 1ST DEFENDANT

JENNIFER CHEPKWONY 2ND DEFENDANT

RULING

1. This ruling is in respect of the Plaintiffs/Applicants Notice of Motion application dated 16th February, 2024. It is expressed to be brought under Articles 50 & 159(2)(d) of the Constitution of Kenya, Sections 1A, 1B & 3B of the Civil Procedure Act and Order 51 Rule 1 of the Civil Procedure Rules.
2. The Plaintiffs/Applicants seek the following orders;
 - a. That the Plaintiff's case be re-opened and the Plaintiffs' be allowed to file a further list of documents and witnesses on the new evidence introduced.
 - b. That the Plaintiffs' case be reopened and the Plaintiffs be granted leave to adduce additional documents.
 - c. That the costs of this application be provided.
3. The application is based on the grounds on its face and the supporting affidavit of Christine Chepkorir the 1st Plaintiff/Applicant.

Factual Background.

4. The Plaintiffs/Applicants commenced the present proceedings vide the Plaint dated 28th March, 2016.



5. They seek the following prayers;
 - a. An order that the Defendants vacate land parcel number Kericho/Kyogong/1259 and in default, an eviction order do issue.
 - b. Costs of this suit.
 - c. Interest.
6. The Defendants/Respondents filed their statement of Defence dated 29th March, 2017 which statement of defence was amended on 20th June, 2017 to include a counterclaim. They seek the following orders in their counterclaim;
 - a. A permanent injunction be issued against the Plaintiff now Defendant by herself, her agents and/or servants and the same injunction is meant to restrain them from evicting, alienating and/or in any other way unlawfully trespassing; unlawfully disturbing the Defendants now the Plaintiffs' quiet possession, lawfully occupation (sic) on the parcels of land comprised in Title No. Kericho/Kyogong/10.
 - b. A declaration that the Defendants now the Plaintiffs are entitled each to $\frac{3}{4}$ of an acre and $\frac{1}{2}$ of an acre or thereabouts which said parcels of land are comprised in land parcel known as Title No. Kericho/Kyogong/10 and further by virtue of the fact that the Defendants /now the Plaintiffs since there (sic) have been in the said land for more than 12 years have acquired their lands through adverse possession.
 - c. An order that the Title deed known as LR No. Kericho/Kyogong/1259 be revoked and/or cancelled and the same parcel of land revert to the original Title- Kericho/Kyogong/10 because it was obtained fraudulently since the grant of letters of administration were not confirmed.
 - d. Costs of dismissal of the suit and counterclaim.
 - e. Any other relief that this Honourable Court may deem fit and just to grant.
7. A perusal of the Court record shows that on 26th September, 2017 the Court delivered a ruling where it consolidated the present matter with ELC Case No. 43 of 2017 (OS). The Court gave the following directions;

“...For the avoidance of doubt, the Plaintiff in ELC No. 11 of 2016 shall be the Defendant in the counterclaim in the same suit and in ELC No. 43 of 2017, while the Defendant in ELC No. 11 of 2016 shall be the Plaintiff in the Counterclaim and in ELC No. 43 of 2017 (OS)...”
8. In ELC Case No. 47 of 2017 (OS) the Defendants/Respondents herein filed the Originating Summons dated 24th April, 2017 which was amended on 18th May, 2023 where they seek the determination of the following questions;
 - a. Whether the Plaintiffs/Applicants herein ought and/or should be declared to have been entitled each to $\frac{3}{4}$ of an acre and $\frac{1}{2}$ of an acre or thereabouts respectively which said parcels of lands are comprised in the said Kericho/Kyogong/10 which said parcel of land are registered under the Registered *Land Act* (Cap 300) the laws of Kenya and situated in Bomet County by virtue of the Plaintiffs/Applicants adverse possession of the said land parcels for a period of over twenty four (24) and eighteen (18) years.



- b. Whether the said Plaintiffs/Applicants be registered as the proprietors of the said parcels they bought and the same are comprised and/or constitute $\frac{3}{4}$ of an acre respectively in place of Tabutany W/O Arap Chumo (Deceased). (sic)
 - c. Whether a permanent injunction be issued against the Defendants/Respondents by themselves, their agents which said injunction is meant for restraining them from evicting, alienating and/or in any other way unlawfully disturbing the Plaintiffs/Applicants quiet possession, lawful occupation and use of their said parcels of land comprised in land parcel LR No. Kericho/Kyogong/10.
 - d. Whether the costs of this suit ought and/or should be provided for by the Defendants/ Respondents.
9. The application under consideration first came up for directions on 20th February, 2024. The Court directed that the application be heard by way of written submissions.
 10. The application was mentioned severally to confirm whether parties had filed their submissions. It was finally reserved for ruling on 1st October, 2024.

The Plaintiffs/Applicants' Contention.

11. The supporting affidavit is sworn by Christine Chepkorir the 1st Plaintiff/Applicant.
12. She contends that the application under consideration is seeking that they be allowed to re-open their case and file a further list of witnesses and documents.
13. She also contends that the matter was heard and parties closed their case. She adds that on 18th May, 2023 the Plaintiffs/Applicants (sic) filed an amended Originating Summons bearing the same date.
14. She further contends that in the amended Originating Summons dated 18th May, 2023 the Plaintiffs/Applicants (sic) introduced new issues that were not pleaded in their initial Originating Summons. She adds that the new amendments introduced new parcel numbers.
15. It is her contention that at the time of the hearing, the new documents that have been introduced were not available and therefore her advocates did not have an opportunity to see them or interrogate them.
16. It is also her contention that they need to file a further list of documents and witness statements based on the new issues and evidence that was introduced in the Amended Originating Summons even though they have already closed their case.
17. It is further her contention that they need to testify and inform the Court of the new issues that have been introduced by the Defendants/Respondents herein. She adds that they need leave of Court to adduce additional evidence to rebut the newly introduced evidence.
18. She contends that their right to a fair hearing will be violated if they are not allowed to cross examine the Plaintiffs/Applicants (sic) on the new evidence.
19. She also contends that she is advised by her advocates on record that every party has a right to a fair hearing which includes the right to challenge the evidence adduced by the other party.
20. She further contends that this Court is obligated under Article 159(2) of the Constitution of Kenya to dispense justice without undue regard to technicalities.



21. It is her contention that this being a land dispute, there is a need to ensure that all parties are given an opportunity to present their case.
22. It is also her contention that if they are not granted that opportunity, the Defendants/Respondents will have stolen a match on them by introducing evidence after the parties have closed their case.
23. It is further her contention that the Plaintiffs/Applicants (sic) will not suffer any prejudice as they will be granted an opportunity for re-examination. She adds that they will be highly prejudiced and their right to a fair hearing violated if they are not allowed to challenge the newly introduced evidence.
24. She ends her deposition by stating that the application under consideration has been necessitated by the amendments introduced by the Plaintiffs/Applicants(sic) themselves.

The Defendants/Respondents Response.

25. The Defendants/Respondents filed a Replying Affidavit sworn by Benjamin Langat(1st Defendant/Respondent) on 22nd February, 2024.
26. He deposes that he has instructions from one Wilfrida Chepkemai Chepkwony who was allowed by this Court to appear in place of the 2nd Defendant/Respondent in this matter to swear the replying affidavit.
27. He admits that they filed an amended Originating Summons which was amended on 18th May, 2023 wherein they have annexed copies of the green card so that their issue of adverse possession can be sustained.
28. He deposes that the said amended Originating Summons has been filed because the 1st Plaintiff/Applicant wants to illegally evict them and yet they have lived on the suit properties for thirty-two years after they purchased them from the 2nd Plaintiff/Applicant.
29. He also deposes that the Plaintiffs/Applicants have no new evidence to adduce as their application has only been filed to delay the matter.
30. He further deposes that they have not introduced new parcel numbers in their amended Originating Summons. He adds that they have only annexed a copy of a green card which shows the owner of land parcel No. Kericho/Kyogong/10 when they purchased portions of the said land.
31. It is his deposition that they have lived peacefully on the suit property until the year 2016 when the 1st Plaintiff/Applicant tried to evict them by claiming that they were lessees. He adds that this was also her evidence when she testified on 12th September, 2019.
32. It is also his deposition that together with the 2nd Defendant/Respondent's father, Thomas Chepkwony, they purchased portions of the suit property from the 2nd Plaintiff/Applicant.
33. It is further his deposition that as at the time they were purchasing the suit property, it was registered in the name of Tabutany W/O Arap Chumo who is the grandmother of the 1st Plaintiff/Applicant.
34. He deposes that that is the basis for filing a claim of adverse possession so as to get justice as they stand to suffer.
35. He also deposes that the Plaintiffs/Applicants filed succession proceedings in Kericho HCC Succession Cause No. 105 of 2014 without disclosing that they were liabilities and/or creditors to the estate of the late Tabutany W/O Arap Chumo.



36. He further deposes that the said circumstances forced them to amend their Originating Summons to bring out their claim clearly that they had purchased $\frac{3}{4}$ of an acre and $\frac{1}{2}$ an acre of the suit property in the years 1992 and 1993.
37. It is his deposition that it will not be in the interest of justice for the Plaintiffs/Applicants to be allowed to re-open their case and file additional evidence as the 1st Plaintiff/Applicant has committed fraud by obtaining a new title deed for land parcel No. Kericho/Kyogong/1259. He adds that the said title ought to be revoked because she lied that they were lessees and yet the 2nd Plaintiff/Applicant upon cross examination admitted that they had purchased their land from her.
38. It is also his deposition that they had filed the application dated 29th May, 2023 seeking to amend their Originating Summons which application the Plaintiffs/Applicants did not respond to. He adds that the present application is only meant to embarrass them (Defendants/Respondents) and fill in the gaps of their (Plaintiffs/Applicants) evidence.
39. It is further his deposition that they amended their Originating Summons before they closed their case and were within the timelines allowed by law.
40. He deposes that the Plaintiffs/Applicants have not annexed any documents that they intend to produce. He reiterates that the only document that they have attached is the green card for land parcel No. Kericho/Kyogong/10 which the Plaintiffs/Applicants neglected to file.
41. He also deposes that he annexed copies of green cards for land parcel No's Kyogong/10, 1259 and 1260 which parcels the Plaintiffs/Applicants had given evidence on.
42. He ends his deposition by urging the Court to dismiss the Plaintiffs/Applicants application.

Issues for Determination.

43. The Defendants/Respondents filed their submissions on 8th March, 2024 while the Plaintiffs/Applicants did not file any submissions.
44. The Defendants/Respondents in their submissions reiterate their averments in their Replying Affidavit and replicate the grounds on the face of the Plaintiffs/Applicants application.
45. The Defendants/Respondents urge the Court to dismiss the Plaintiffs/Applicants application with costs.
46. The Defendants/Respondents have annexed to their submissions Summons for Revocation of grant dated 5th July, 2017 and the judicial decision of Mombasa HCC No. 37 of 2007; Samwel Kiti Lewa vs Housing Finance Co. of Kenya Ltd & James M. Kagete.

Analysis and Determination.

47. I have considered the application, the response thereto and the Defendants/Respondents submissions.
48. It is my view that the following issues arise for determination;
 - a. Whether the Plaintiffs/Applicants should be allowed to re-open their case.
 - b. Whether the Plaintiffs/Applicants should be granted leave to file additional documents.
 - c. Who should bear costs of the application.



A. Whether the Plaintiffs/Applicants should be allowed to re-open their case.

49. In the judicial decision of Samuel Kiti Lewa v Housing Finance Co. of Kenya Ltd & another [2015] eKLR the Court held as follows;

“17. Uganda High Court, Commercial Division in the case Simba Telecom –v- Karuhanga & Anor (2014) UGHC 98 had occasion to consider an application to re-open the case for purpose of submitting fresh evidence. That Court referred to an Australian case Smith –versus- New South Wales [1992] HCA 36; (1992) 176 CLR 256 where it was held:

“If an application is made to reopen on the basis that new or additional evidence is available, it will be relevant, at that stage, to enquire why the evidence was not called at the hearing. If there was a deliberate decision not recorded, ordinarily that will tell decisively against the application. But assuming that that hurdle is passed, different considerations may apply depending upon whether the case is simply one in which the hearing is complete, or one which reasons for the judgment have been delivered. In the latter situations the appeal rules relating to fresh evidence may provide a useful guide as to the manner in which the discretion to reopen should be exercised.”

18. The Ugandan Court in the case Simba Telecom (supra) held thus:

“I agree with the holding in the case of Smith Versus South Wales Bar Association (1992) 176 CLR 256, where it was held that the question of whether additional evidence should be taken at the trial is considered separately from the question of whether the case should be reopened. Consequently even after the case has been reopened, the Court retains its discretionary powers whether to admit any piece of evidence or not.” ...

19. The Court retains discretion to allow re-opening of a case. That discretion must be exercised judiciously. In exercising that discretion the Court should ensure that such re-opening does not embarrass or prejudice the opposite party. In that regard re-opening of a case should not be allowed where it is intended to fill gaps in evidence. Also such prayer for re-opening of the case will be defeated by inordinate and unexplained delay.” (Emphasis Mine)

50. In the present case, the Plaintiffs/Applicants are seeking that their case be re-opened and they be allowed to produce additional documents.

51. The Plaintiffs/Applicants seek that their case be re-opened on the ground that the Defendants/ Respondents amended their Originating Summons filed in ELC case No. 43 of 2017 (OS) that had earlier been consolidated with the present matter and introduced new issues.

52. The Plaintiffs/Applicants contend that the Defendants/Respondents introduced new parcel numbers that were not pleaded in their initial Originating Summons that has been filed in the year 2016.



53. In response, the Defendants/Respondents deny that they introduced new issues in their Amended Originating Summons and submit that they only annexed a copy of the green card for land parcel No. Kericho/Kyogong/10 which showed the original registered owner of the suit property.
54. The Defendants/Respondents also submit that they had purchased portions of land parcel No. Kericho/Kyogong/10 from the 2nd Plaintiff/Applicant.
55. On perusal of the Court record, it shows that the Plaintiffs/Applicants gave their evidence on 12th June, 2019 and closed their case.
56. On 15th February, 2022 the 1st Defendant/Respondent and his witnesses tendered evidence.
57. After the 1st Defendant/Respondent and his witnesses tendered evidence, the Defendants/Respondents filed the application dated 29th May, 2023 seeking leave to amend the Originating Summons.
58. On 24th October, 2023 the Court gave the following directions;

“The Application dated the 29th May, 2023 having been served way back in June, 2023, there is no plausible explanation why it has taken the Plaintiff (sic) close to 4 months to file their response. To that effect, the said application dated 29th May, 2023 is allowed. The amended OS is herein deemed as being properly on record. However due to the advanced stage in which the matter had proceeded, the Plaintiff shall be granted leave to re-open their case if need be so as to testify on the amended OS...”
59. From the above Court Directions, it is evident that the Plaintiffs/Applicants were allowed to re-open their case and give evidence on the Amended Originating Summons. Nothing is easier than to allow their prayer to do so.

B. Whether the Plaintiffs/Applicants should be granted leave to file additional documents.

60. The Plaintiffs/Applicants are also seeking leave to adduce additional documents. As stated in the preceding paragraphs, the Plaintiffs/Applicants contend that the Defendants/Respondents introduced new parcel Numbers in their amended Originating Summons and they therefore seek leave to file a further list of documents.
61. The Defendants/Respondents oppose the grant of the said leave and submit that they did not introduce any new parcel numbers in the amended Originating Summons.
62. On perusal of the amended Originating Summons, the amendments introduced are prayers sought should the questions to be determined be answered in the affirmative. The affidavit in support of the amended Originating Summons has three Green Cards annexed to it. They are for Kericho/Kyogong/ 10 and the parcels resulting from its subdivision i.e. Kericho/Kyogong/ 1259 and Kericho/Kyogong/ 1260.
63. The originating summons Initially file (before the amendment) also has an affidavit in support of it. Annexed to the said affidavit are, among other documents, certificates of official search for Kericho/Kyogong/10 and Kericho/Kyogong/ 1259. The applicants, at paragraph 9, deposed that Kericho/Kyogong/ 1259 was originally Kericho/Kyogong/10.
64. It is evident that the three Green cards annexed to the affidavit in support of the amended Originating Summons do not, introduce new issues or amount to new evidence. They are copies of the register in respect of the suit parcel and the subdivisions resulting therefrom. This information has always been



on record and both parties in their oral evidence have testified on the existence of Kericho/Kyogong/1259 and Kericho/Kyogong/10.

65. The official searches for Kericho/Kyogong/10 and Kericho/Kyogong/ 1259 have always been within the knowledge and possession of the Applicants herein. In my view copies of the register (Green cards) compliment these certificates of search and the fact of them being annexed to the affidavit in support of the amended Originating Summons does not in any way prejudice the Applicants so as to require them to file a further list of witnesses and documents.
66. It is important to note that the Plaintiffs/Applicants have not set out in detail the said new parcel numbers that have purportedly been introduced by the Defendants/Respondents in their amended Originating Summons. They have also not annexed documents that they seek leave to introduce, the witness(s) they intend to call or offered any explanation on how the copies of the register for Kericho/Kyogong/10 and the resultant sub-divisions are prejudicial to them.
67. Taking into consideration the foregoing, I decline to grant leave to the Plaintiffs/Applicants to file a further list of documents.

Disposition.

68. Consequently, the Plaintiffs/Applicants application dated 16th February, 2024 partially succeeds and I make orders as follows;
 - a. Leave is hereby granted to the Plaintiffs to re-open their case and they are at liberty to recall witnesses and or summon witnesses to adduce evidence or rebut the contents of the documents annexed to the affidavit in support of the Origination Summons i.e. Green Cards for Kericho/Kyogong/ 10 and the parcels resulting from its subdivision i.e. Kericho/Kyogong/ 1259 and Kericho/Kyogong/ 1260.
 - b. The costs of this application shall abide the outcome of this suit.
69. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT KERICHO THIS 30TH DAY OF JANUARY, 2025.

L. A. OMOLLO

JUDGE.

In the presence of: -

Mr. Ngetich for the Defendant/Respondent.

The firm of Mitey for the Applicant- Absent.

Court Assistant; Mr. Joseph Makori.

