



Kipkemoi & another v Chelanga & another (Environmental and Land Originating Summons E003 of 2023) [2024] KEELC 4869 (KLR) (4 June 2024) (Judgment)

Neutral citation: [2024] KEELC 4869 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ITEN
ENVIROMENTAL AND LAND ORIGINATING SUMMONS E003 OF 2023**

L WAITHAKA, J

JUNE 4, 2024

BETWEEN

WILSON SUTER KIPKEMOI 1ST PLAINTIFF

JULIANA JEPKEMOI YEGO 2ND PLAINTIFF

AND

WILLIAM CHELANGA 1ST DEFENDANT

BENJAMIN CHELANGA 2ND DEFENDANT

JUDGMENT

Introduction

1. The plaintiff herein took up the originating summons dated 21th June, 2023 for determination of the issues listed therein.
2. As can be discerned from the pleadings, evidence and submissions made in respect of the plaintiff's case, it appears that the plaintiff's suit is premised on the claim/allegation that the parcels of land known as Elgeyo Marakwet/Kapsowar/1881 and 1883 are subject of a trust in favour of the estate of Paul Suter Kipkemoi (deceased).
3. The respondents filed responses to the originating summons through which they have averred that they are sons of Chelanga Cheboo who died on 10th July, 1985; that the plaintiffs are their cousins; that the areas in which the suit properties are situated were declared a land adjudication section in early 1970s; that the 2nd respondent was registered as the absolute proprietor of land parcel number Elgeyo Marakwet/Kapsowar/1881 on 23rd March 1977 and got issued with a title deed in respect thereof on 23rd September 1981; that the 2nd respondent has had a quiet and peaceful possession of his parcel of land since 1977; that the plaintiffs by themselves, their parents or uncles have never raised any objection to the registration of the 2nd respondent as the proprietor of his parcel of land either during land



adjudication or thereafter and that the plaintiffs only raised issues concerning ownership of the suit properties in 2021 when their clan purported to lodge a claim over their land before the area chief.

4. It is the respondents' case that registration of the suit properties in the name of the 1st respondent (in 1881) and their father (1883) is not subject of any beneficial interest and/or trust in favour of Paul Suter as claimed by the plaintiffs.
5. Concerning the plaintiff's claim that they admitted before the area chief and elders that the suit properties belong to them (plaintiffs' clan), the respondent's deny that claim and contend that the plaintiffs' suit is statute barred and discloses no reasonable cause of action against them.
6. According to the 2nd respondent, parcel number 1883 is not registered in his name but in the name of Vincent Kipkoech Kanda, who is not a party to this suit.
7. It is the respondents' case that Vincent Kipkoech Kanda is a necessary party to this suit without whose participation in the suit the orders sought by the plaintiffs' cannot issue in respect of the parcel of land known as Elgeyo Marakwet/Kapsowar/1883.

Evidence

Plaintiff's Case

8. When the case came up for hearing, PW1 Wilson Suter, relied on his written statement and affidavit sworn on 21st June, 2023. He informed the court that they brought the case on behalf of their father, Paul Suter Kipkemoi who died on 19th March, 1986. He produced the certificate of death issued in respect of Paul Suter's death and the letters of administration *ad litem* they obtained in respect Paul Suter's Estate as Pexbt 1 and 2. He further informed the court that his father inherited the suit properties from his father who had in turn inherited it from his father (their grandfather); that during land adjudication, his father was not living in the suit properties (was living in Nandi); that he was born in the suit properties and was living there during land adjudication. He explained that he could not be registered as the proprietor of the suit properties because he was underage.
9. PW1 reiterated their pleaded case that the suit properties were registered in the name of Benjamin Chelanga & Chelanga Cheboi to hold on their behalf. He further informed the court that before his father died, he (his father) returned to the suit properties and tried to claim his land but was informed that the land belonged to the Chelanga family. His father died before the land dispute was resolved. Before his father died, he reported the dispute over ownership of the suit properties to the area chief. (His father reported the dispute to the area chief in 1994). In 2021, they (plaintiffs) also lodged a claim before the area chief.
10. PW1 further informed the court that in a meeting held on 10th September 2021, village elders (Assis) resolved that the suit properties belonged to them and directed that they be given their land upon paying the respondents the costs of transfer and issuance of a title deed in their favour.
11. PW1 urged the court to find that the suit properties belong to their family and to order that they be given their rightful share of the suit properties.
12. In cross examination, PW1 informed the court that the dispute over ownership of the suit properties is between Kaptukimuok clan and Kapcheboo clan; that his father had other brothers and that his father and his father's brothers were their rightful owners of the suit properties. He acknowledged that the other members of his family who are also entitled to a share of the suit properties, should their claim succeed, are not parties to the suit. He further acknowledged that parcel number 1883 is registered in the name of Chelanga Cheboi, deceased, and that he has not sued the administrators of



- the estate Cheboi Chelanga. He stated that he knows that the defendants are administrators of the estate of Chelanga Cheboi .
13. He asserted their claim that during land adjudication, their father was away in Nandi, and stated that Chelanga Cheboi offered himself to be registered as proprietor of the suit properties in trust for them. He acknowledged there is no documentary proof that registration of the suit properties is subject to a trust in their favour.
 14. PW1 reiterated his evidence to the effect that his father laid a claim on the suit properties in 1994 and admitted that his father did not get any land from the defendant's father.
 15. He acknowledged that they took no action concerning their father's claim until 2021, when they took the dispute to the chief and that that no decision was made in his favour or in favour of his co-plaintiff (Susan) in respect of the suit properties.
 16. On whether he is aware that his suit has been filed out of time, he stated that he is not aware of that fact but acknowledged that his father was evicted from the suit properties in 1983.
 17. He admitted that neither Juliana's father, David Yego, nor his father's other brother, Kibiwott, was living in the suit properties (they had their own land elsewhere).
 18. PW1 further informed the court that their grandfather, Kutukumok, is buried in their uncle's land (Kibiwott's) land inherited from their grandfather.
 19. In re-examination, PW1 stated that he left the suit parcel (I take this to mean plot No.1883) in 1984; that they were chased away by William Chelanga with his mother and siblings; that after they were chased away, the land was left vacant. He maintained that Juliana's family was not living in the suit properties.
 20. He further informed the court that the Chelanga family occupied the suit parcels for over 10 after they were chased away; that Juliana's family returned to the land in 1988 and got evicted after living there for about 10 years.
 21. Regarding the dispute presented before the area chief having been between Kaptumuok and Kapcheboo clans, he stated that the clans have never gone to court. He affirmed that they tried to resolve the dispute between their clan and that of the defendant's through elders (Assis) and acknowledged that they brought the suit on behalf of their clan. That notwithstanding, he urged the court to grant the orders sought in their favour, claiming that they would share the suit properties if the orders are issued in their favour.
 22. PW2-Juliana Jepkemoi Yego, relied on her affidavit and witness statement after they were adopted as her evidence in chief. She informed the court that the case is in relation to land parcels number 1881 and 1883 which belonged to Paul Suter (the 1st plaintiff's father); that 1st plaintiff's father had inherited the parcels from his father and the 1st plaintiff's father was not registered as the proprietor of the suit properties because he was working far away, in Nandi.
 23. Unlike PW1, she informed the court that the suit properties were registered in Benjamin and Cheboi's names because Benjamin was working at survey of Kenya. Like PW1, she stated that registration of the suit properties is subject of a trust in their favour.
 24. She further informed the court that she was born in land parcel number 1883 and has always lived there. In 2003, William Chelanga told her that she did not own any part of the land and evicted her and her family from land parcel number 1883.



25. After they were evicted, they moved to a parcel of land in Lagam which belongs to Kaptukimuok clan, which is yet to be adjudicated.
26. After they failed to get back their land, they reported the matter to the area chief who convened a meeting attended by elders (Assis) and members of the two clans. In the meeting, members of the Kapcheboo clan agreed that they (Kaptumuok clan) are entitled to the land. She further informed the court that in the meeting, it was resolved that Kapcheboo would give Kaptumuok land upon payment of the money used for transfer and issuance of title deed. She urged the court to grant them the orders sought in their Originating Summons.
27. In cross examination, she stated that she was born in 1992; that her grandfather was called Kutumuok; that she never met her grandfather and does not know when he died.
28. She admitted that she was not born at the time land adjudication was done or at the time title to the suit property was issued.
29. She informed the court that Paul Suter was a brother of her late father, David Yego; that the 1st plaintiff and she are cousins and that she never saw the 1st plaintiff's family living in the suit properties. Further, that her family and she were at that time living in a different parcel of land; that between her family and that of the 1st plaintiff, it is the family of the 1st plaintiff that lived in the suit properties first and that she wants the suit properties to be shared between the family of the 1st plaintiff and herself.
30. She acknowledged that the 1st plaintiff has brothers and sisters and that she too has siblings; that they brought the suit on behalf of Kaptumuok clan and that she is not aware that their suit is not a representative one.
31. She further informed the court that when they left the suit properties in 2003, they were evicted by the defendants; that this is the first suit they have filed in respect of the suit properties and that during the meeting of 2021, Benjamin Chelanga who was initially working in survey, stated he had registered the land in his name; that she could not tell whether Benjamin fraudulently registered the suit properties in his name.
32. In re examination, she stated that the reason they took long to file the suit is because they reported the dispute to the area chief and that they thought the matter would be resolved but the defendants became uncooperative.
33. She stated that in the meeting before the chief, Pius, in confidence, told her that Benjamin had registered the land in his name because he worked in survey but in reality the land belonged to their clan/family.
34. She maintained that she was born in land parcel number 1883 and stated that their family had two grass thatched houses therein. They lived there until 2003 when they were evicted.
35. She stated that the defendants never lived on the suit parcels and that they only used the lower portion of the land to cultivate.
36. PW3, Wilson Chepkurui Cheboi, a retired Assistant Chief for Maina Sub Location informed the court that he attended a meeting held on 10th September 2021 convened by the area chief together with Assis; that he knows the plaintiffs and the defendants and also knew their fathers; that in the meeting of 2021, the 2nd plaintiff and their family were claiming that the land belonged to their family; that Pius, a brother to the defendants, agreed that the land belonged to Katumuok clan and that the elders (Assis) resolved that Kaptumuok clan should be given the land upon payment of the money used to transfer and register the land.



37. In cross examination, he stated that he attended the meeting of 10th September 2021 as a member of the public and not in his capacity as Assistant Chief; that he did not give any evidence and that, in the list of persons who attended the meeting, the names of the (elders) Assis members have not been distinguished from the other persons who attended the meeting.
38. He maintained that the (elders) Assis, in that meeting, resolved that the land belonged to Kaptumuok clan.
39. In re-examination, he stated that Assis are elders who are usually invited to resolve disputes in a community; that he knows the history of their community and that in the meeting of 10th September 2021, the dispute was resolved by the (elders) Assis based on the history the (elders) Assis had of the land and the evidence given by the representatives of the two clans.
40. PW4 Daniel Cherop, Assistant Chief Tumeiywo Sub Location, informed the court that he knows the parties to the dispute before the court; that the parties reported a dispute to their office and that they convened a meeting on 10th September 2021 at Hosen Hill.
41. He further stated that in the meeting held on 10th September 2021, which he attended, together with (elders) Assis, they resolved that Kapcherambach (family of the plaintiffs) be given their land demarcated by the family of Kapcheboo (that is parcels number 1881 and 1883); that they further resolved that the plaintiffs will meet the cost of transferring title to their name (which was taken as the KShs.50/- shillings which the plaintiffs' family had failed to pay); that after they made that decision, the plaintiffs came to their office and complained that the defendants had refused to honour the undertaking and that they advised the plaintiffs to file a case in court. He produced the minutes of the meeting held on 10th September 2021 as Pexbt 5.
42. In cross examination, he stated that his Sub Location falls under Kipsaiya location and that the dispute falls within Kipsaiya sub-location; that at the time of the meeting held on 10th September 2021, he was the Assistant Chief Tumeiyo Sub Location. He clarified that when the dispute started, he was the Assistant Chief Kipsaiya Location.
43. He further stated that according to the minutes, Pexbt 5, the dispute was between two clans; that the resolution was for the clans not individuals, for instance plaintiffs and the defendants in their personal capacities; that he was the secretary who took the minutes of the meeting; that the members of Assis in the meeting were over 20; that the names of the (elders) Assis were not listed in the minutes (Pexbt 5) and that he did not have the deliberations of the Assis members but only what they concluded. He clarified that he was present during the deliberations by the (elders) Assis.
44. He acknowledged that in the meeting, the suit parcels 1881 and 1883, were not mentioned.
45. Before his appointment, in 2014, he had not participated or handled the dispute.
46. He started dealing with the dispute sometime in 2021, before the minutes of 10th September 2021.
47. He was not aware that Chelanga Cheboi or his estate were not parties to the suit before court. He did not bring the original minutes to court but he has them.
48. He acknowledged that the ID number and the signature signed against attendant number 25, Ben Chelanga (ID No.32xxxxxx) is different from that of the defendant shown to him being ID No. 4503805. He acknowledged that the minutes and the lists are not certified. Nevertheless, he stated that they are stamped.



49. In re-examination, he stated that at the time of the meeting, Paulo Suter was not alive. He could not tell whether the signature and ID No. against Ben Chelanga were his or for attendant No. 26, Timothy Kemboi.
50. He asserted that both William Chelanga and Benjamin Chelanga attended the meeting. He saw them.

Defendant's Case

51. DW1, Benjamin Chelanga, relied on his witness statement recorded and signed on 21st November 2023, after it was adopted as his evidence in chief. He informed the court that he is the registered owner of Plot No.1881. He produced the title deed issued to him in respect of that parcel of land on 23rd September 1981 as Dexbt 1.
52. Concerning Plot No.1883, he informed the court that it is registered in the name of Vincent Kipkoech and that registration of that parcel in favour of Vincent was effected on 19th December 2022 before the instant suit was filed. He produced an original certificate of search, issued in respect of that parcel of land attesting to that fact, as Dexbt 2. He informed the court that before the parcel of land was registered in the name of Vincent, it was registered in the name of his father, Chelanga Cheboi, deceased. He produced the certificate of death for his father as Dexbt 3. His father died on 10th July 1985. After his father died, they filed a succession cause in respect of his Estate. Explaining that no objection was raised against the Succession Cause they filed, DW1 informed the court that his son, Vincent Chelanga Cheboi, got registered as proprietor of parcel number 1883 after the succession proceedings were concluded.
53. DW1 further informed the court that he was issued with title deed for parcel No. 1881 after land adjudication; that there was no objection during the adjudication process or thereafter; that his father also got title to 1883 after land adjudication and that there was no objection to his father's registration as proprietor of the parcel.
54. DW1 further informed the court that the plaintiffs are not members of his clan but members of another clan, Kapcheboo; that their family is called Katukumuok; that the two families had their own parcels; that the land belonging to the plaintiffs' family is located on the lower side of their land and is currently registered in the name of Petro Kanda.
55. Concerning Plot No. 1881, he informed the court that he is the one in occupation of that parcel; that the plaintiffs have never been in occupation of that parcel and that his brother William Chelanga, does not live in that parcel. He maintained that their registration as proprietors of the suit properties is not subject of any trust in favour of the plaintiffs.
56. In cross examination, DW1 stated that his family is Kapcheboo while that of the plaintiffs is Katukumuok; that Petro Kanda is an uncle of the plaintiffs and that Petro Kanda is the one who holds land in trust for the plaintiffs' family.
57. He admitted that he attended the meeting at the chief's office and stated that the plaintiffs claimed their land. He stated that it is not clear to him why the plaintiffs wanted their land yet they have land elsewhere.
58. He acknowledged that the elders (Asis) determined that the suit properties belongs to the plaintiffs' family but stated that position is not correct. He maintained that the plaintiff's land is in the hands of Petro.



59. In re-examination, DW1 stated that Petro is from Katukumuok family and asserted that it is Petro who is holding land in trust for the plaintiffs. He maintained that during land adjudication, there was no objection from the plaintiff's family and that since the parcels were registered in their name, they have never been subdivided.
60. DW2 William Kanda Chelanga, relied on his witness statement recorded and signed on 21st November 2023 after it was adopted as his evidence in chief.
61. In cross examination, he stated that he knows the plaintiffs who are their neighbours; that he attended the meeting held on 10th September 2021 and that he did not agree with the decision made in that meeting.
62. He informed the court that Plot No. 1883 is currently registered in the name of Vincent but he is the one who lives there and utilizes it.
63. At close of hearing parties filed submissions, which I have read and considered.

Submissions

Plaintiff's Submissions

64. In the plaintiffs' submissions dated 22nd March 2024, an overview of the parties pleaded case and evidence is given and two issues framed for the court's determination;
 - a. Whether the late Wilson Suter Kipkemboi was entitled to the suit properties (parcel number 1881 and 1883) as a beneficial owner of the land bequeathed to him by his forefathers; and
 - b. Whether there was a constructive trust on the part of Cheboi Chelanga to hold the land in trust for the plaintiffs.
65. With regard to the first issue, it is submitted that the plaintiffs' claim is based on the fact that the suit properties are the plaintiffs' ancestral land handed down from one lineage to another; that there exists uncontroverted evidence of the fact that the land belonged to plaintiffs' great great father, Rotich Kanda, who passed the suit properties to Yego Suter and Masai Kibiwot Rotich.
66. It is further submitted that there is uncontroverted evidence that Benjamin Chelanga used to work as a surveyor up to around 1981 which fact informs the acts and omissions done by him; that there is uncontroverted evidence through the documentary evidence produced by the plaintiffs that the dispute between the plaintiffs and the defendants was resolved by elders in the plaintiff's favour.
67. On whether the suit properties are subject to a trust in favour of the plaintiffs, reference is made to the cases of *Twalib Hatayan & another v Said Sagger Ahmed Heldy & 5 others* cited in Civil Appeal No. 117 of 2019-*Kazungu Fondo Shuto & another v. Japheth Noti Charo & another* and the case of Kimutai Kitilit vs. Michael Kibet (2018) eKLR and submitted that in the circumstances of this case, the court should infer that the suit properties are subject to a trust in favour of the plaintiffs.
68. Further reference is made to the case of *Dina Management Ltd vs. County Government of Mombasa & 5 Others* (Petition 8 E10 of 2021)(2023) KESC 30 (KLR) (21 April 2023) to buttress the contention that the suit properties are subject of a constructive trust in favour of the plaintiffs.

Respondents' Submissions

69. In the respondents submissions filed on 2nd April 2024, an overview of the parties' pleaded cases and evidence is given and four issues framed for the court's determination.



- a. Whether the plaintiffs' have locus standi;
 - b. Whether the suit is competent;
 - c. Whether the plaintiff's submissions are valid; and
 - d. Who should bear the costs of the suit?
70. On whether the plaintiffs have locus standi, it is acknowledged that the suit relates to the Estate of Paulo Suter Kipkemoi (deceased) and based on the plaintiffs' evidence adduced to the effect that the suit properties belong to the family of Katukumuok, submitted that the suit is a disguised representative suit.
71. Whilst the plaintiffs' case is based on the Estate of Paulo Suter Kipkemoi, it is pointed out that there is no prayer in the pleadings on behalf of the estate and submitted that suing as administrators of Paulo Suter Kipkemoi (deceased) is just a mere façade.
72. According to the defendants, the plaintiffs' suit is a representative suit brought on behalf of Katukumuok clan. Based on the provisions of Order 1 Rule 8(1) and (2) of the *Civil Procedure Rules*, which requires for issuance of a notice on parties represented in a representative suit, it is submitted that in the circumstances of this case, that requirement of the law was not complied with.
73. Arising from the plaintiffs' failure to exhibit any notice issued to their clansmen notifying them of their intention to file the suit on their behalf and the plaintiffs' prayer that the suit properties be registered in their names, it is submitted that the plaintiffs' lacked capacity to institute the suit.
74. On the competency or otherwise of the suit, it is submitted that the claim is against the wrong parties. In that regard, reference is made to the plaintiffs' pleadings and pointed out that the plaintiffs' case is against actions or inactions of the defendants' father, Chelanga Cheboi (deceased). It is also pointed out that the defendants are sued in their personal capacity as opposed to as legal representatives of estate of their deceased father and submitted that the defendants cannot personally be asked to suffer the consequences of their deceased father's perceived actions or omissions.
75. Based on the provisions of Order 4 Rule 7 of the *Civil Procedure Rules* which provides that a claim has to establish the defendant's interest and liability, it is submitted that the pleadings by the plaintiffs do not indicate how the defendants are interested in their deceased father's estate and their liability.
76. The defendants urge the court to find that the plaintiffs' claim does not disclose a reasonable cause of action against them.
77. It further submitted that no evidence was presented in court capable of proving that the suit properties were registered in the defendants' late father's name, Chelanga Cheboi, to hold in trust for Paul Suter Kipkemoi, as contended in the plaintiffs' pleadings; that the provisions of Order 37 Rule 1 of the *Civil Procedure Rules* cannot be invoked against the defendants because the late Chelanga Cheboi (their father) was not a trustee of Paul Suter and because the defendants are not administrators of the estate of their father or trustees of the plaintiffs.
78. It is further submitted that the prayers sought in prayer 1, 2 and 3 of the Originating Summons are all interlocutory in nature hence incapable of being granted as final orders.
79. On the contention that the plaintiffs' suit is time barred, reference is made to section 7 of the *Limitation of Actions Act*, Cap 22 Laws of Kenya and to the evidence of PW1 and PW2 who admitted that adjudication began in 1977 and the certificates of search produced in evidence and submitted that the plaintiffs' suit is time barred.



80. It is further submitted that the plaintiffs' unlawfully amended the parties to the suit through their submissions.
81. The issues framed by the plaintiffs for determination by the court are said to be not in sync with the reliefs sought in the Originating Summons and reiterated that no prayer has been made in respect of the Estate of Paulo Suter Kipkemoi (deceased) in the Originating Summons.
82. Because parties are bound by their pleadings, it is submitted that the plaintiffs can only frame issues based on the reliefs sought in their claim.
83. The defendants urge the court to disregard the plaintiffs' submissions on the ground that they introduce extraneous issues not arising from the pleadings or evidence on record.

Analysis and Determination

84. I have carefully read and considered the pleadings filed in this matter, the evidence adduced in respect thereof and submissions filed by the parties and find the issues for the court's determination to be:-
 - a. Departure from pleadings;
 - b. Competency or otherwise of the plaintiffs' suit; and
 - c. Subject to the outcome of (2) above, whether the plaintiffs have made up a case for being granted the orders sought.
85. On departure from pleadings, it is pointed out that the plaintiffs, through their submissions, departed from their pleadings by introducing parties and issues not raised in their submissions.
86. Upon review of the plaintiffs pleaded case, I agree with the defendants that the plaintiffs unlawfully deviated from their pleaded case. Consequently, I decline to consider their case based on the new issues introduced in their case. Nevertheless, in the interest of justice, I will proceed and consider their case based on the pleadings and the evidence adduced in respect thereof.
87. On the competency or otherwise of the plaintiffs' suit, it noteworthy that the case is premised on actions or omissions of the defendants' father, Chelanga Cheboi (deceased). The defendants have not been sued in their capacity as the legal representatives of their deceased father's estate comprised in the suit properties.
88. It is also noteworthy that one of the suit properties, parcel number 1881, is not registered in the name of the defendants' father but in the name of the 1st defendant. No claim of wrongdoing has been levelled against the 1st defendant in respect of that property. No evidence, either, was adduced capable of proving that the registration of parcel number 1881 in the name of the 1st defendant is subject to a trust in favour of the plaintiffs. Without any pleading to the effect that the registration of the 1st defendant as the proprietor of parcel number 1881 is subject of a trust in favour of the plaintiffs', the plaintiffs cannot be heard to claim the property (1881) is subject of any trust in their favour.
89. The evidence adduced shows that the property (1881) was registered in the name of the 1st defendant during land adjudication. No evidence at all was adduced capable of showing that the property belongs to the plaintiffs. The plaintiffs' appear to have been motivated by the decision of elders (Assis) that the suit properties belonged to the family/clan. Unfortunately, no evidence was adduced capable of proving that case either to the required standard of proof, on a balance of probabilities, or at all.
90. As regards parcel number 1883, whereas there is evidence that the same was registered in the name of the defendants' father during land adjudication, other than the decision of the elders to the effect that



the suit properties belonged to the plaintiffs' family/clan, no evidence was adduced capable of proving that registration of the properties is subject to any trust in favour of the plaintiffs or their family or clan.

91. The evidence adduced in this case, which evidence was not controverted by the plaintiffs is that during land adjudication, the plaintiffs had their close relatives who could have been registered to hold the land in trust for them if indeed their family/clan had interest in the suit property. There was no objection during land adjudication. The plaintiffs' attempt to lay a claim to the suit properties was resisted by the defendants' father (the plaintiffs were evicted from the suit property by the defendant's father).
92. Whilst a claim for trust is not subject to the statute of limitation, in the circumstances of this case, where the defendants took so long to institute a suit in court to raise their claim against the defendant's father and/or his estate after they were evicted from the suit properties, it is the view of the court that, in the special circumstances of this case, their claim is statute barred, the same having been brought more than 12 years after their cause of action accrued against the defendants' deceased father or the defendants' deceased father's estate. I hasten to point out that on account of the plaintiffs' delay to move to court to lay a claim on the suit properties, parcel number 1883, was upon the death of the defendants' father, transmitted to a third party, Vincent Chelanga Cheboi.
93. As at the time the instant suit was filed the property land parcel 1883, did not belong to the defendants or the Estate of the defendants' deceased father. The only way the plaintiffs could lay a claim to the property is through suing the current registered owner and claiming that the transmission of the suit property to him is subject to a trust in their favour. No such case was advanced before this court. Being of the view that the orders sought cannot issue against the defendants, I find the plaintiffs' suit to be fatally defective and proceed to dismiss it with costs to the defendants.
94. Orders accordingly.

JUDGMENT DATED, SIGNED AND DELIVERED AT ITEN THIS 4TH DAY OF JUNE, 2024.

L. N. WAITHAKA

JUDGE

Judgment delivered electronically in the presence of:-

Mr. Simiyu holding brief for Ngigi Mbugua for the plaintiff/appellant

Mr. Esikuri holding brief for Mr. Kipnyekwei for the defendants/respondents

Court Asst.: Christine

