



**Rono v Chemweno (Environment & Land Case E004 of 2023)  
[2024] KEELC 7042 (KLR) (29 October 2024) (Judgment)**

Neutral citation: [2024] KEELC 7042 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT ELDORET  
ENVIRONMENT & LAND CASE E004 OF 2023  
JM ONYANGO, J  
OCTOBER 29, 2024**

**BETWEEN**

**JOSEPH RONO ..... PLAINTIFF**

**AND**

**SOTI CHEMWENO ..... DEFENDANT**

**JUDGMENT**

1. The Plaintiff in his Complaint dated 17<sup>th</sup> July, 2023 seeks the following reliefs:
  - a. A declaration that the late Toroitich Kiprono was the legitimate owner of that parcel of land known as Sergoit/Koiwoptaboi BLK 1(KELJI) 145 which Joseph Rono is now the current administrator.
  - b. An eviction order to issue against the Defendant his agents/and/or servants from that parcel of land known as Sergoit/Koiwoptaboi BLK 1(KELJI) 145.
  - c. A permanent injunction restraining the Defendants, their agents and/or servants from interfering with or in any other way dealing with that parcel of land known as Sergoit/Koiwoptaboi BLK 1(KELJI) 145 in any manner detrimental to the Plaintiff.
  - d. Costs and interest of the suit.
  - e. Any other relief this Honourable Court may deem fit and just to grant.
2. The Plaintiff's case is that his late father, Toroitich Kiprono, purchased the land known as Sergoit/Koiwoptaboi BLK 1(KELJI) 145 (the suit property) in 1974. That his father, who used the land for farming, was upon his demise, survived by 2 wives and 14 children. The Plaintiff averred that on 10<sup>th</sup> February, 2023 he was issued with a Grant of Letters of Administration vide Succession Cause No. E033 of 2022 over his father's estate. The Plaintiff claims that the Defendant has without any notice trespassed on the suit property claiming ownership. He averred that there has never been any



transaction regarding the suit property between the Plaintiff's late father and the Defendant or any other party. It is the Plaintiff's case that several attempts to go back to the suit property have proved futile as the Defendant has been violent and denied him entry. The Plaintiff further averred that despite demand and notice to sue having been made, the Defendant has ignored the same, hence the suit.

3. From the Affidavit of Service sworn by one Chacha Mtundi Barnabas, a process server, the Defendant was on 23<sup>rd</sup> July, 2023 served with the Plaint filed herein, Summons to Enter Appearance, Verifying Affidavit and the accompanying documents. He deponed that he was accompanied by the Plaintiff to the Chief's Office, Chepkanga Location. That the Chief sent a village elder to summon the Defendant. Mr. Chacha deponed that he served the Defendant at the Chief's office and that the Defendant received the documents but refused to sign on the return copy. Despite being served with the pleadings, the Defendant did not enter appearance and neither did she file a defence. On 28<sup>th</sup> August, 2023 the Plaintiff filed a request for interlocutory judgment. Consequently, the case was set down for formal proof hearing on 20<sup>th</sup> May, 2024.

### **Plaintiff's Evidence**

4. On the date fixed for hearing, the Plaintiff testified under oath as PW1. He testified that the land belonged to his late father who died in 1991. He testified that his father's first wife was chased away before his mother was married. He testified that his father, who was a businessman, bought the land measuring about 10 Acres in 1974 from a white settler. PW1 testified that he had no documents to prove the sale as they were violently evicted from the land and were not able to take any of their documents. PW1 stated that upon purchase, his father used to lease the land at an annual fee of KShs. 650/- to one Arap Maina who stayed on the land until 1979. It is PW1's testimony that in 1977, the Defendant occupied a portion of the suit property as a squatter and built a grass-thatched house. That after Arap Maina left the land, the Defendant remained and still stays on the land.
5. PW1 testified that he asked the Defendant to leave but she refused. PW1 testified that when he conducted a search on the land, he discovered that it was registered in the name of one William Kiprotich Sengwer. That he does not know who the said William Sengwer is, as he has never met him, neither does he know how the Defendant is related to him. PW1 told this court that the Defendant has constructed a permanent house on the suit property and cultivates a portion of the land. PW1 indicated that when the Defendant refused to vacate, he reported the matter to the County Commissioner at Kapsoya, who advised him to conduct a search and referred him to the Chief at Chepkanga Location. PW1 testified that the Chief's verdict was that the land belonged to his late father. His prayer was for the Defendant to be evicted from the land. In support of his case, he produced a copy of his father's death certificate as PEX1, a copy of the Grant of Letters of Administration as PEX2 and a copy of the Certificate of Official Search as PEX3. He also prayed for an injunction to restrain the Defendant from occupying the suit property and for costs of the suit.

### **Analysis and Determination**

6. I have considered the Plaintiff's pleadings, witness statement, the oral evidence led in court and the documents produced in support of the Plaintiffs case. The following issue are for determination:
  - a. Whether the Plaintiff has established that his late father was the registered proprietor of the suit property
  - b. Whether the Plaintiff is entitled to the orders sought



## **Whether the Plaintiff has established that his late father was the registered proprietor of the suit property**

7. The Plaintiff's claim herein is premised on the contention that the suit property belonged to his late father who allegedly purchased it from a white settler in the year 1974. Based on this contention, he seeks an order of permanent injunction against the Defendant as well as an eviction order against her. As indicated above, the Defendant was served with the Plaint, Summons to Enter Appearance and the attendant documents, but she failed to appear or file a defence. Consequently, the Plaintiff's evidence remains uncontroverted. However, even though the Plaintiff's evidence and testimony is uncontroverted, it is trite law that it must bring out the fault on the part of the Defendant. It is also trite that despite the fact that the suit is undefended, the Plaintiff still has a duty to formally prove his case on a balance of probabilities as is required by law. In the case of *Kirugi and Another vs Kabiya & 3 others* (1987) KLR 347 the Court of Appeal held that;

“The burden was always on the Plaintiff to prove his case on a balance of probabilities even if the case was heard as formal proof”. Likewise, failure by the Defendant to contest the case does not absolve a plaintiff of the duty to prove the case to the required standard.”

8. Similarly, in the case of *Gichinga Kibutha vs Caroline Nduku* (2018) eKLR the Court held that;

“27. The Appellant's claim is not liquidated. The hearing referred to above is the one commonly known as “Formal proof”. The Civil Procedure Rules do not define “Formal Proof”. Black's Law Dictionary defines “Formal” as including “rules established by an institution according to certain processes”. This particular hearing is for the claimant to prove his claim. It is not automatic that in instances where the evidence is not controverted, the claimant's claim shall have his way in Court. He must discharge the burden of proof. He must prove his case however much the opponent has not made a presence in the contest.”

9. I will therefore proceed to determine whether the Plaintiff has established his case on a balance of probabilities and if so whether the reliefs sought should be granted. Notably, despite claiming that the land belonged to his late father, the Plaintiff has not produced any document as evidence that his late father was registered as proprietor of the suit property. He only indicates that they were violently evicted from the suit property, but does not indicate by who and under what circumstances they were evicted from the land. One of the documents filed alongside the Plaint is an Abstract from Police Records for loss of documents. The Police Abstract was issued pursuant to OB50/9/7/2019 and involves:

“Loss of documents photocopy, MA Land Search Letter Block No. 1 Koiwoptabai No. Plot 145, Copy death Certificate...”

10. None of the documents listed on the Police Abstract as lost is a Title Deed over the suit property. From that list, I do not see also the alleged Agreement for Sale between his late father and the white settler. There is no document filed or produced in court that establishes that the suit property is or was owned by the Plaintiff's late father.

11. On the contrary, the Certificate of Official Search produced as PEX3 indicates that the land known as *Sergoit/Koiwoptaboi BLK 1(KELJI) 145* measures 2.49HA and is owned by one William Kiprotich



Sengwer, who was issued with a Title Deed on 30<sup>th</sup> December, 1996. Section 35(1) and (2) of the [Land Registration Act](#) provide that;

- “1) Every document purporting to be signed by the Registrar shall, in all proceedings, be presumed to have been so signed unless the contrary is proved.
- 2) Every copy of or abstract from a document certified by the Registrar to be a true copy or extract shall in all proceedings, be received as prima facie evidence of the contents of the document.”

12. Going by this provision, then the copy of the certificate of official search produced PEX3, being in respect of the suit property, is conclusive evidence that the said William Kiprotich Sengwer is the registered proprietor of the suit property and he holds the title deed thereto. The law is very clear on the position of a holder of a title in respect to the land. Section 24(a) of the [Land Registration Act](#) provides for the interest conferred by registration. It provides;

“Subject to this act the registration of a person as the proprietor of land shall vest in that person the absolute ownership of that land together with all the rights and privileges belonging or apparent thereto.”

13. He is also entitled to the protections under Section 26(1) of the [Land Registration Act](#) which provides as follows:

“The certificate of title issued by the Registrar upon registration, or to a purchaser of land upon a transfer shall be taken by all the courts as prima facie evidence that the person named as the proprietor of the land is absolute and indefeasible owner and the title of that proprietor shall not be subject to challenge except;

- a) On the ground of fraud or misrepresentation to which the person is proved to be a party or;
- b) Where the certificate of title has been acquired illegally, un-procedurally or through a corrupt scheme.”

14. The Plaintiff did not include William Kiprotich as a party to this suit even though the Plaintiff has had the information that he is the registered owner of the suit property since 2<sup>nd</sup> July, 2019 when he obtained the search. Neither did he lead evidence to establish that he obtained the title through fraud or misrepresentation, illegally, un-procedurally or through a corrupt scheme. But even if he had, the court would not be in a position to make such substantive orders against him since he is not a party to this suit. The Plaintiff claims that he appeared before the Chief with his grievance and the Chief's verdict was that the suit property belonged to his late father. The proceedings at the Chief's office were neither filed nor produced in court. In the event that the Chief has special knowledge of the details surrounding the Plaintiff's father's ownership of the suit property, he was not called to testify on the same or on what informed his alleged verdict. The upshot is that the Plaintiff has failed to prove that his late father Toroitich Kiprono is the registered owner of the suit property.

### **Whether the Plaintiff is entitled to the orders sought**

15. The Plaintiff informed the court that the Defendant has refused to vacate the suit property and usually threatens him with violence. In this regard, the Plaintiff filed together with the Plaintiff, a Demand letter/ Eviction Notice dated 26<sup>th</sup> May, 2023. He sought to enforce the proprietary interests over his late



father's property as an administrator of his estate. Section 25(1) of the [Land Registration Act](#) provides for the rights of a proprietor. It provides as follows:

“(1) The rights of a proprietor, whether acquired on first registration or subsequently for valuable consideration or by an order of the court, shall not be liable to be defeated except as provided by this Act and shall be held by the proprietor, together with all privileges and appurtenances belonging thereto, free from all other interests and claims whatsoever...”

16. The above provision read with Sections 24 and 26 of the Act, vests the registered owner of land with rights, privileges and protections as a registered proprietor of land. Further, an individual's right to property is protected under Article 40(1) of [the Constitution](#). However, for the protections in the above-mentioned provisions to kick in, one must prove ownership of the land. This court has already found that the Plaintiff has not demonstrated the suit property lawfully belongs to his father. Therefore, the Plaintiff is not entitled to any protection under law with respect to the suit property herein.
17. It is also not clear whether there is any relationship between the Defendant and the said William Kiprotich Sengwer, or at all. Of note however, is that the Defendant has been in occupation of the suit property longer than William Kiprotich Sengwer has owned it. It is therefore difficult to make the finding that the Defendant is wrongly on the suit property. This Court cannot for instance determine whether or not the Defendant is on the suit property with the permission of the registered proprietor. In any event, since the Plaintiff failed to prove an interest over the suit property, this court cannot declare the Defendant a trespasser as that determination can only be made in favour of the registered owner, which the Plaintiff is not. Consequently, the prayer for an order of eviction also fails.
18. In addition, the Plaintiff having failed to prove his case on a balance of probabilities, he is also not entitled to the prayer for a permanent injunction. That remedy also can only be availed to the registered owner of the land.
19. From the foregoing, the court's conclusion is that the Plaintiff has not proved his case on a balance of probabilities against the Defendant as required. The Plaintiff's suit is thus dismissed. The suit was not defended, and since the claim was also not proved, the court will not make any order as to costs.

**DATED, SIGNED AND DELIVERED AT ELDORET THIS 29<sup>TH</sup> DAY OF OCTOBER 2024.**

**J.M ONYANGO**

**JUDGE**

In the presence of;

Joseph Rono Plaintiff present in person

No appearance for the Defendant

Court Assistant: Brian

