



**Tonje v Chepyegon & 11 others (Environment & Land Case  
168 of 2016) [2023] KEELC 895 (KLR) (16 February 2023) (Judgment)**

Neutral citation: [2023] KEELC 895 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT ELDORET  
ENVIRONMENT & LAND CASE 168 OF 2016  
EO OBAGA, J  
FEBRUARY 16, 2023**

**BETWEEN**

**ANGELA CHEPTAMOS TONJE ..... PLAINTIFF**

**AND**

**ISHMAEL CHEPYEGON ..... 1<sup>ST</sup> RESPONDENT**

**JACKSON KIPLIMO AMDANY ..... 2<sup>ND</sup> RESPONDENT**

**LIZAH JEBET KIPTOO ..... 3<sup>RD</sup> RESPONDENT**

**ALICE JEPCHUMBA TALAI ..... 4<sup>TH</sup> RESPONDENT**

**ALFRED KIBIWOT'T CHEPYEGO ..... 5<sup>TH</sup> RESPONDENT**

**KIPKOECH CHERUIYOT ..... 6<sup>TH</sup> RESPONDENT**

**JUSTUS CHEBOI ..... 7<sup>TH</sup> RESPONDENT**

**SYLAS KIPTUI SANG ..... 8<sup>TH</sup> RESPONDENT**

**MARK KOMEN ..... 9<sup>TH</sup> RESPONDENT**

**ZACHARIAH KIPKEMOI KIPROP ..... 10<sup>TH</sup> RESPONDENT**

**AND**

**WILLIAM TALLAM ..... 1<sup>ST</sup> DEFENDANT**

**JOAN JELAGAT KANDIE ..... 2<sup>ND</sup> DEFENDANT**



## JUDGMENT

### Introduction

1. The Plaintiff filed this suit claiming the following reliefs:-
  - a. An eviction order to issue against the Defendants removing them, their agents, servants and or workers with all their structures from the Plaintiff's parcel of land known as BARINGO/SABATIA – 103/331.
  - b. A permanent order of injunction to issue restraining the Defendants by themselves, their agents, servants and or workers from entering, dealing with or in any way interfering with the Plaintiff's parcel of land known as BARINGO/SABATIA – 103/331.
  - c. Costs of this suit be borne by the Defendants.

### Background;

2. The Plaintiff is daughter to Kezia Talai Tonje who was the registered owner of LR No. Baringo/Sabatia/103/256 measuring 8.0 hectares. This land was subdivided and it yielded among other subdivisions LR. No Baringo/Sabatia/103/331 measuring 1.78 hectares (suit property).
3. Prior to the subdivision, Kezia Talai Tonje had sold various portions of her land to various individuals. Her son John Bartinga Tonje also sold portions of the land before and after the death of his mother to various individuals.
4. The family of the Estate of Kezia Talai Tonje carried out succession in respect of her estate. A certificate of confirmation of grant was issued on 10<sup>th</sup> February, 2015. The suit property was transmitted to the Plaintiff. The Plaintiff obtained certificate of title on 28<sup>th</sup> May, 2015.
5. The 2<sup>nd</sup> to 12<sup>th</sup> Defendants did not attend court to testify. Their counter-claim was dismissed for non-attendance and their defence deemed closed.

### Plaintiff's case;

6. The Plaintiff testified that the suit property was transmitted to her upon conclusion of the succession cause in respect of the Estate of her later mother. She stated that she did not authorize her brother John Bartinga Tonje to sell parts of the suit property. The Plaintiff stated that the Defendants invaded the suit property hence her prayer for eviction and injunction.

### 1<sup>st</sup> Defendant's case;

7. The 1<sup>st</sup> Defendant testified that in 1996 he entered into a sale agreement with the late Kezia Talai Tonje for the purchase of three plots each measuring 50x100. Each plot was going for Kshs 35,000/= He paid Kshs 70,000/= on execution of the agreement. The balance of Kshs 35,000/= was to be paid within 3 months. He stated that he cleared the balance within 3 months.

### Submissions of the parties

8. The Plaintiff filed her submission on 13<sup>th</sup> April, 2022. The 1<sup>st</sup> Defendant filed his submissions on 14/6/2022. The 2<sup>nd</sup> to 12<sup>th</sup> Defendants did not file any submissions despite being given 30 days to file theirs from the time of service of the Plaintiff's submissions.



### **Analysis and determination;**

9. I have carefully considered the evidence adduced by the Plaintiff and her witness as well as the 1<sup>st</sup> Defendant and his witness. I have also considered the submissions by Plaintiff and 1<sup>st</sup> Defendant. The issues which emerge for determination are firstly, did the late Kezia Talai Tonje sell land to the 1<sup>st</sup> Defendant. Secondly, did John Bartinga Tonje have authority to sell land to the Defendants. Thirdly, which order should be made on costs.
10. There is no contention that the late Kezia Talai Tonje was the registered owner of L.R Baringo/Sabatia/103/256. The late Kezia Talai Tonje who died in 2002 sold land to the 1<sup>st</sup> Defendant on 11<sup>th</sup> January, 1996. The 1<sup>st</sup> Defendant produced a sale agreement as defence exhibit 1. In this agreement, the 1<sup>st</sup> Defendant paid Kshs 70,000/= on execution of the agreement. The balance was to be paid within 3 months. The 1<sup>st</sup> Defendant stated that he cleared the balance within 3 months. There is no evidence that he cleared the balance. While under cross-examination, he conceded that he had no evidence of clearance of the balance.
11. The late Kezia Talai Tonje had the capacity to sell land as she was the registered owner. I therefore find that the 1<sup>st</sup> Defendant is entitled to two plots measuring 50x100 for which he fully paid.
12. From the documents in the file, John Bartinga Tonje sold land to the 5<sup>th</sup> Defendant in exchange for a motor vehicle. This was on 27<sup>th</sup> March, 2012. The plot he sold to this 5<sup>th</sup> Defendant is LR. Baringo/Sabatia/103/334 which is not the suit property. If the 5<sup>th</sup> Defendant is on the suit property, then he is a trespasser.
13. The same John Bartinga Tonje sold land to the 8<sup>th</sup> Defendant on 26<sup>th</sup> March, 2008. This was after her mother's land had been subdivided and her mother had died. The same John Bartinga Tonje sold land to the 10<sup>th</sup> Defendant on 7<sup>th</sup> February, 2014. This is after his mother had died.
14. Even after the process of succession had been undertaken and the suit property transmitted to the Plaintiff, John Bartinga Tonje sold a portion of the suit property on 15<sup>th</sup> April, 2016. John Bartinga Tonje was not the administrator of the Estate of his mother. Infact the process of succession was carried out in 2015.
15. John Bartinga Tonje claims that he had a power of attorney to sell land from her late mother. There was no power of attorney which he had from her mother. What he called a power of attorney is a document from Agricultural Finance Corporation in respect of LR. Sabatia/103/101 which is not the suit property. It is not a power of attorney.
16. It is therefore clear that John Bartinga Tonje had no authority to sell his mother's land when he was not an administrator of her estate. He also did not have authority to sell land which had been bequeathed to the Plaintiff.

### **Disposition;**

17. From the above analysis, it is clear that Plaintiff has proved her case on a balance of probabilities against the 2<sup>nd</sup> to 12<sup>th</sup> Defendants. I therefore allow the Plaintiff's claim against the 2<sup>nd</sup> to 12<sup>th</sup> Defendants in terms of prayers (a) (b) and (c) of the plaint dated 25<sup>th</sup> April, 2016 and filed in court on 27<sup>th</sup> April, 2016. The Plaintiff's claim against 1<sup>st</sup> Defendant is dismissed with costs.
18. On the other hand, I find that the 1<sup>st</sup> defendant has proved that he purchased two plots measuring 50x100 from Kezia Talai Tonje. The Plaintiff who is the registered owner of LR. No. Baringo/



Sabatia/103/331 should transfer two plots measuring 50x100 to the 1<sup>st</sup> Defendant. The 1<sup>st</sup> Defendant shall have costs of the counter-claim.

**DATED, SIGNED AND DELIVERED AT ELDORET ON THIS 16<sup>TH</sup> DAY OF FEBRUARY, 2023.**

**E. O. OBAGA**

**JUDGE**

In the virtual absence of Plaintiff's counsel who was aware of date of delivery of judgement.

Court Assistant –Laban

**E. O. OBAGA**

**JUDGE**

**16<sup>TH</sup> FEBRUARY, 2023**

