



Siror & another v Charuiyot & 2 others (Environment & Land Case E036 of 2022) [2023] KEELC 16582 (KLR) (28 March 2023) (Ruling)

Neutral citation: [2023] KEELC 16582 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAPSABET
ENVIRONMENT & LAND CASE E036 OF 2022**

**MN MWANYALE, J
MARCH 28, 2023**

BETWEEN

BENJAMIN KIPLAGAT SIROR & ANOTHER PLAINTIFF

AND

LEONARD CHARUIYOT & 2 OTHERS DEFENDANT

RULING

1. Before court for determination is the Notice of Motion dated November 25, 2022 which seeks orders as follows;
 - i. Spent
 - ii. Spent
 - iii. The honourable court be and is hereby pleased to issue a temporary injunction restraining the Respondent by themselves, their agents and or be community of Olangata in Nandi County and to the general public from trespassing and or using the illegal road demarcated/ opened passing through the suit land parcel No Nandi/Kipsigak/38 pending the hearing and determination of the substantive suit herein.
 - iv. The OCS Kapsabet Police Station do enforce and ensure compliance of the orders issued herein above.
 - v. Costs of this application.
2. The Motion is grounded on grounds Inter alia, that the Applicants are the Administrators of the Estate of late Chepsiror Arap Sang who was the proprietor of the suit land and passed on in 1991. The Respondent as representative of the community of Kipture and Irimisi sub-location approached the family of the late Chepsiror Arap Sang proposing to purchase a portion of land measuring 0.8 acres to use as an access road. The parties agreed to sale at Kshs 7, 200,000/= but no payment was made



and the Respondents have mobilised the residents and forcefully demarcated and opened the illegal road passing through Nandi/Kipsigak/38. That the respondents and the area youth are violent and Applicants reported to the police station vide OB No 44/21/5/2022 and OB No 4/9/11/2022. The Respondents having not paid the consideration have no colour of right.

3. The Respondent opposed the application through the Replying affidavit to the 1st Defendant/ Respondent, Leonard Cheruiyot. In their response the Respondents indicated that they bought 0.5 acres from the father of the 1st Applicant who was the son of the registered proprietor in the year 2002. The consideration for the purchase of 0.5 acres of the parcel was fully paid and the access road has been available for use by members of the public since 2002, and has been graded, gravelled over the years, culvert has been installed for case of drainages and series about 10,000 people.
4. The applicants only objected to the use in 2001; and the land Registrar Nandi County observed that the road had been in use. The Applicants were directed to open the road as it serves as an access road to Kapsabet town.
5. The road is currently maintained by the County Government of Nandi from 2013 and previously was under the National Government. The Respondent has annexed copies of the Agreement made in 2002, copy of the letter by the Registrar dated 28/4/2022, survey proposal of the connecting road on Nandi/Kisigak/38.
6. The issue of purchase of the road vide the Agreement dated 4/9/2021 was to hood wink them to purchase the property that they already had purchased and had taken possession for over 20 years.
7. The Respondents deponed that the Applicant withheld crucial information by failing to disclose the agreements dated March 2, 2002 and 13/4/2002 in their further affidavits by the Applicant. The existence of the two agreements dated for purchase of public road reserve dated 2/3/2002 and 13/4/2002, is not denied by the Applicant, the Applicant denies the capacity of the 1st Applicant's father validity enter into an agreement of sale with the Respondents.
8. The non-disclosure of the said Agreements by the Applicants paints an applicant who withheld crucial information to the court and noting that pursuant to the said agreements, members of public have had access of the road since 2022, it would not be in the interest of justice to grant the orders sought.
9. The court finds that in so far as the Applicant did not disclose crucial information the Applicants are not deserving of the equitable relief of injunction and their application is thus dismissed.

DATED AT KAPSABET THIS 28TH DAY OF MARCH 2023

M. N. MWANYALE

JUDGE

In the presence of:

Mr. Songok for Plaintiff/ Applicant

Mr. Korir for Defendant/ Respondent

