



**Cheruiyot (Suing as the legal administrator of the Estate of Joseph Kiruiyot Sitienei v Ruto & 2 others (Environment & Land Case 105 of 2020) [2023] KEELC 17205 (KLR) (16 March 2023) (Judgment)**

Neutral citation: [2023] KEELC 17205 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT ELDORET  
ENVIRONMENT & LAND CASE 105 OF 2020**

**EO OBAGA, J  
MARCH 16, 2023**

**BETWEEN**

**KIPLAGAT CHERUIYOT (SUING AS THE LEGAL ADMINISTRATOR OF THE ESTATE OF JOSEPH KIRUIYOT SITIENEI) ..... PLAINTIFF**

**AND**

**BENJAMIN MALAKWEN RUTO ..... 1<sup>ST</sup> DEFENDANT**

**DANSON CHEMJOR KURUI ..... 2<sup>ND</sup> DEFENDANT**

**BENEDETA JEPKEMOI KIPTUM ..... 3<sup>RD</sup> DEFENDANT**

**JUDGMENT**

**Introduction**

1. By a plaint dated November 17, 2020, the Plaintiff sought the following reliefs from the Defendants: -
  - a. A declaration that the plaintiff is the legal and lawful owner of that parcel of land known as KARUNA/KARUNA BLOCK 2 (KARUNA)/74;
  - b. Permanent injunction restraining the Defendants, their agents or servants from entering, encroaching, trespassing, ploughing or dealing in any manner with that parcel KARUNA/KARUNA BLOCK 2 (KARUNA)/74;
  - c. An order of cancellation and rectification of the register to rectify the register of the suit property by cancelling the irregular title issued to the Defendants and registering the plaintiff in their place.
  - d. Costs of the suit.
  - e. Any other relief that the honorable court deems just and fit to grant.



## **Background;**

2. The Plaintiff is son of Joseph Kiruiyot Sitienei (Deceased) who died on August 19, 2020. The deceased was a shareholder of Karuna Farm Limited (The Company). The Company purchased a parcel of land known as LR 8483/2 measuring 793 acres. the land was later subdivided and given to the shareholders.
3. During the sharing out, some shareholders missed out. This was because those who were directors of the company including the Deceased allocated themselves more plots than had been agreed.
4. The Defendants including two others moved to Uasin Gishu Land Disputes Tribunal, sitting at Kapsaret where they filed a claim against the Deceased and 4 others. At the conclusion of the hearing, the panel of elders found in favour of the claimants. The Defendants who were among the claimants were awarded LR No Karuna/Karuna Block 2 (Karuna) 74 (Suit property) measuring 1.721 hectares to be shared equally.
5. The suit property had already been registered in the name of the Deceased on August 24, 1993. The Defendants moved to the Chief magistrate's court at Eldoret where they had the award of the Tribunal adopted as judgement of the court. They then applied for execution of the decree, had the suit property subdivided and registered in their names.
6. The Deceased and 4 others moved to the High Court where they filed miscellaneous application No 140 of 2003 where they sought leave of the court to bring Judicial Review proceedings with a view to quashing the Tribunal award. The leave was granted but the Deceased and 4 others who were the Ex-parte Applicants did not file the main motion within 21 days as required. The deceased and 2 others instead moved to the High Court at Eldoret where they filed HCCC No 31 of 2004 seeking to nullify the Tribunal verdict.
7. The High court case was transferred to the Environment and Land Court where it became ELC No 141 A of 2012. This case was fully heard and the same was dismissed in a judgement delivered on January 31, 2019. The Deceased and 4 others then caused Miscellaneous Application No 140 of 2003 to be transferred to the Environment and Land Court where it became ELC Misc Application No 9 of 2019. An application for extension of time was then made in this file in which the Deceased and 4 others wanted the leave that had been granted to them in 2003 extended by 7 days. The application was dismissed vide a ruling delivered on October 21, 2020. It is after the dismissal of the application and after the demise of the Deceased that the Plaintiff herein filed the present suit.
8. Two of the Defendants who were served neither entered appearance nor filed defence. One of the Defendants was not served as he was said to be residing in America with his family.

## **Plaintiff's case;**

9. The plaintiff testified that the Deceased purchased the suit property from Emmanuel Wamukoe on March 21, 1987 for a sum of Kshs 30,000/= The said Emmanuel Wamukoe wrote a letter dated April 16, 1987 in which he informed the secretary of the company that he had surrendered the suit property to the Deceased. The sale agreement and the letter were produced as exhibits 15 and 8 respectively.
10. In the plaint, the plaintiff alleges that the Defendants fraudulently subdivided the suit property; that they misrepresented themselves as members of Karuna Farm; that they attempted to alienate the suit property and that they forged the members register.
11. The Plaintiff claimed that the Defendants appeared before Kapsaret Land Disputes Tribunal where they lied that their share of land had been grabbed by the deceased who was a director of the company.



He further claimed that the Deceased only appeared once before the Tribunal and that he never went back. He produced the Tribunal proceedings as exhibit 14(a) and (b).

12. The Plaintiff called PW2 Francis Cheruiyot Kwambai who stated that he is the one who drafted the agreement of March 21, 1987. PW3 Martin Cheptarus stated that he was an assistant manager and that the Deceased was the manager. He stated that the Defendants were not shareholders of Karuna Farm Limited.

### **Analysis and determination;**

13. I have carefully gone through the evidence adduced by the plaintiff as well as his submissions. The reliefs which the plaintiff is seeking are the same reliefs which the Deceased sought in ELC No 141 A of 2012. The Deceased's claim in ELC No 141 of 2012 was dismissed in a judgement delivered on January 31, 2019. The Deceased did not appeal against the said judgement. The plaintiff instead tried to have an extension of time to file Judicial Review proceedings 15 years after the initial leave had been granted. This application for extension was dismissed in a ruling delivered on October 21, 2020.
14. The Deceased had the opportunity to proceed by way of Judicial Review. He was granted that opportunity but squandered it. He instead went on to file ELC 141 of 2012 which was dismissed. His attempt to breathe life into the leave which had lapsed 15 years early could not help.
15. In the case of *Florence Nyaboke Machani – Vs- Mogare Amosi Ombui & 2 others Civil Appeal No 184 of 2011*, the Court of Appeal stated as follows: -

' It is trite law that a valid judgement of a court unless overturned by an appellate court remains a judgement of court and is enforceable, the issue of jurisdiction notwithstanding. The plaintiff had all avenues to impugn the award as well as the judgement. He did nothing. As sarcastically put by counsel for the defendants in his submissions, the plaintiff chose to sleep on his rights like the Alaskan fox which went into hibernation and forgot that winter was over. In the meantime, the 1<sup>st</sup> Defendant's rights to the suit premises crystalized. Equity assists the vigilant and not the indolent. The plaintiff has come to court too late in the day and accordingly, the declaratory relief must fail. I doubt that even the remedy of the declaration is available to the plaintiff to impugn a valid court judgement and decree.'

16. The Plaintiff's suit is clearly an abuse of the process of court. The Tribunal proceedings are clear that the Deceased and his co-directors improperly used their office to award plots in excess of what they were entitled to.

### **Disposition;**

17. From the above analysis, it is clear that this suit is devoid of any merit. It is an abuse of the process of court. The same is dismissed with no order as to costs.

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

**E. O. OBAGA**

**JUDGE**

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

Court Assistant –Laban

**E. O. OBAGA**



**JUDGE**

**16<sup>th</sup> MARCH, 2023**

