



**Kapchelogol Family & 7 others v Cabinet Secretary In charge of Lands & 3 others; The Estate of the Late Retired President Daniel Arap Moi & another (Interested Parties) (Environment and Land Miscellaneous Application 5 of 2022) [2022] KEELC 4815 (KLR) (27 July 2022) (Ruling)**

Neutral citation: [2022] KEELC 4815 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT ITEN  
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION 5 OF 2022**

**L WAIHAKA, J**

**JULY 27, 2022**

**FORMERLY ELDORET ELC MISC. CIVIL APPLICATION**

**NO. E47 OF 2021**

**IN THE MATTER OF AN APPLICATION BY  
KAPCHELOGOL FAMILY, KAPLOBAUK FAMILY,  
KAPCHULIARIKOW FAMILY AND KAPKABEL FAMILY FOR LEAVE TO  
APPLY FOR JUDICIAL REVIEW ORDERS OF CERTIORARI, MANDAMUS  
AND PROHIBITION AGAINST THE DECISION OF THE DEPUTY COUNTY  
COMMISSIONER MARIGAT SUB-COUNTY JOB ANUNDA DATED 14<sup>TH</sup> SEPTEMBER  
2021 AND 27<sup>TH</sup> OCTOBER 2021 TO ORDER THAT THE LAND DISPUTE  
PARCEL NO.1168-MAJI NDEGE “B” CAN ONLY BE DISCUSSED WITH A VIEW  
TO COMPENSATION AS BETWEEN SAMUEL CHERENO AND THE ESTATE OF  
DANIEL T. ARAP MOI TO THE EXCLUSION OF THE EX PARTE APPLICANTS**

**AND**

**IN THE MATTER OF LAND ADJUDICATION ACT CAP 284  
LAWS OF KENYA AND THE CONSTITUTION OF KENYA, 2010  
AND FAIR ADMINISTRATIVE ACTIONS ACT NO.4 OF 2015**

**AND**

**IN THE MATTER OF THE DECISION OF THE DEPUTY COUNTY COMMISSIONER  
MARIGAT SUB-COUNTY JOB ANUNDA DATED 14<sup>TH</sup> SEPTEMBER 2021  
AND 27<sup>TH</sup> OCTOBER 2021 TO ORDER THAT THE LAND DISPUTE PARCEL  
NO.1168-MAJI NDEGE “B” CAN ONLY BE DISCUSSED WITH A VIEW TO  
COMPENSATION AS BETWEEN SAMUEL CHERENO AND THE ESTATE OF  
DANIEL T. ARAP MOI TO THE EXCLUSION OF THE EX PARTE APPLICANTS**

**BETWEEN**

**KAPCHELOGOL FAMILY ..... 1<sup>ST</sup> EXPARTE APPLICANT**



**KAPLOBAUK FAMILY ..... 2<sup>ND</sup> EXPARTE APPLICANT**  
**KAPCHULIA FAMILY ..... 3<sup>RD</sup> EXPARTE APPLICANT**  
**KAPKIYAI FAMILY ..... 4<sup>TH</sup> EXPARTE APPLICANT**  
**KAPTOWERO FAMILY ..... 5<sup>TH</sup> EXPARTE APPLICANT**  
**KAPCHANGOLE FAMILY ..... 6<sup>TH</sup> EXPARTE APPLICANT**  
**KAPCHULIARIKOW FAMILY ..... 7<sup>TH</sup> EXPARTE APPLICANT**  
**KAPKABEL FAMILY ..... 8<sup>TH</sup> EXPARTE APPLICANT**

**AND**

**CABINET SECRETARY IN CHARGE OF LANDS ..... 1<sup>ST</sup> RESPONDENT**  
**DEPUTY COUNTY COMMISSIONER, MARIGAT SUB COUNTY .... 2<sup>ND</sup>**  
**RESPONDENT**  
**LAND ADJUDICATION OFFICER, BARINGO COUNTY .... 3<sup>RD</sup> RESPONDENT**  
**SAMUEL CHERONO ..... 4<sup>TH</sup> RESPONDENT**

**AND**

**THE ESTATE OF THE LATE RETIRED PRESIDENT DANIEL ARAP**  
**MOI ..... INTERESTED PARTY**  
**LAKE BOGORIA SPA RESORT ..... INTERESTED PARTY**

### **RULING**

1. This ruling is in respect of prayer number 5 in the ex parte applicants' chamber summons application dated December 17, 2021 for stay of implementation of the impugned decision of the Deputy County Commissioner (DCC), Marigat Sub-County.
2. The prayer is premised on the ground that the DCC ordered that award of compensation in respect of the parcel of land in dispute to wit parcel No 1168-Maji Ndege 'B' can only be discussed between the 4<sup>th</sup> respondent (Samuel Cheronon) and the estate of Daniel Arap Moi to the exclusion of the applicants; that the ex parte applicants have interest in the compensation to be discussed with the estate of Daniel Arap Moi by virtue of being the ones who gifted the suit land to the late retired president Daniel Arap Moi.
3. It is the ex parte applicants' case that they have been making endless efforts to be involved in the appeal before the DCC, Marigat without success. The ex parte applicants have faulted the DCC, Marigat for ordering that the discussion concerning compensation in respect of the suit property be done between the estate of the late Daniel Arap Moi and the 4<sup>th</sup> respondent, Samuel Cheronon, whom the ex parte applicants accuse of having secretly filed an appeal before the minister, yet he was not an objector in the objection proceedings filed before the land adjudication officer. The ex parte applicants are apprehensive that unless the order sought is granted, the 4<sup>th</sup> respondent may receive compensation in respect of the suit property to their exclusion.



4. I have carefully read and considered the affidavit evidence adduced in support of the prayer for conservatory relief sought by the ex parte applicants; the response by the respondents and the Interested Party and the submissions by the ex parte applicant in support of the prayer.
5. From the affidavit evidence adduced by parties to this dispute, I gather that land parcel No 1168 Maji Ndege 'B' Baringo adjudication area was during demarcation registered in favour of the late president Daniel Arap Moi. That registration was objected to by Ronald Kaibos and Chepkoroisi vide objection cases No 162 and 331. The cases were however withdrawn, after the objectors informed the 'court' that they had agreed to withdraw their objection as they had agreed to sort the dispute amicably with the respondent.
6. The proceedings of the land adjudication officer ('court') indicate that the objectors had raised the objection on their own behalf and on behalf of Daniel Kaibos, Benard Kaibos and Kibowen Nicholas.
7. Although the 4<sup>th</sup> respondent had not filed an objection, the record indicates that he had complained to the 'court'. His complaint was that he had been overlooked in the discussions. The objectors informed the court that they talked with him and that he, 4<sup>th</sup> respondent, agreed that he had been sorted out.
8. Despite the objection having been withdrawn by the objectors, the proceedings of the court show that the 'court' decided that the rights on plot No 1168 to remain as registered. The 'court' also gave the parties 60 days right of appeal.
9. In spite of the fact that the 4<sup>th</sup> respondent had not filed objection to the 'court' as by law required, there is evidence that the 4<sup>th</sup> respondent appealed against the decision of the 'court' to the minister.
10. The appeal to the minister was heard by the DCC, Marigat in exercise of delegated authority to hear appeals to the minister under section 29 of the [Land Adjudication Act](#).
11. Upon considering the issues raised in the appeal, the DCC Marigat inter alia ordered that the issue of compensation in respect of the suit property be negotiated between the 4<sup>th</sup> respondent and the estate of the retired president the late Daniel Arap Moi and that the 4<sup>th</sup> respondent to determine who else is to participate in the negotiation.
12. It is clear from the foregoing set of facts, that issues of both law and fact abound concerning the process leading to filing of an appeal to the minister by the 4<sup>th</sup> respondent and the decision of the minister that it is the 4<sup>th</sup> respondent to determine who to engage in the negotiation with the estate of the retired president, Daniel Arap Moi. For instance, there is no evidence to show that the persons who had filed the objection to the land adjudication officer were acting for themselves and the 4<sup>th</sup> respondent or for themselves and other persons, the ex parte applicants, included. I say this because the totality of the evidence adduced in the case before the land adjudication and the proceedings before the minister suggest that the objectors may have been acting for themselves and other undisclosed persons.
13. A reading of section 26 with section 29 of the [Land Adjudication Act](#) which provide for objection to the adjudication register and for appeal to the minister suggests that only a person who had filed an objection to the register under section 26 may file an appeal to the minister under section 29. In that regard see the said sections of the law which provide as follows:-

' 26(1) Any person named in or affected by the adjudication register who considers it to be incorrect or incomplete in any respect may, within sixty days of the date upon which the notice of completion of the adjudication register is published, object to the adjudication officer in writing, saying in what respect he considers the adjudication register to be incorrect or incomplete.



(2). The adjudication officer shall consider any objection made to him under subsection (1) of this section, and after such further consultations and inquiries he thinks fit he shall determine the objection.

29. Any person who is aggrieved by the determination of an objection under section 26 of this act may, within sixty days after the date of determination, appeal against the determination to the minister-

(a) by delivering to the minister an appeal in writing specifying the grounds of the appeal; and

(b) sending a copy of the appeal to the director of land adjudication,

And the minister shall determine the appeal and make such order thereon as he may think just and the order shall be final.'

14. In view of the foregoing issues of law and fact, questions of law and fact arise from the process, firstly, can a person who had not filed objection proceedings file an appeal to the minister; secondly, can an appeal lie to the minister in respect of objection proceedings that had been withdrawn? thirdly, was the jurisdiction of the minister rightly invoked in the circumstances of this case? fourthly, can the minister admit persons who were not parties to the objection proceedings in the appeal. Those are weighty questions to be determined in the main judicial review proceedings. Suffice to say, that there is need to safeguard the subject matter of the proceedings pending the hearing and determination of the main motion.

15. For the foregoing reasons, I grant prayer 5 of the chamber summons dated December 17, 2021 as prayed.

**DATED, SIGNED AND DELIVERED, AT ITEN THIS 27<sup>TH</sup> DAY OF JULY 2022.**

**LN WAITHAKA**

**JUDGE**

