



**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA  
AT NAIROBI (NAIROBI LAW COURTS)**

**Civil Case 1639 of 2001**

1. Land and Environmental Law Division.
2. Subject of Main Suit - Land ownership

C/S Mara/ 11 Motiok 54Y

i) Finalized Suit

- a) Respondents/defendants sought adverse possession
- b) Land dispute which had awarded respondents share of land
- c) Award by land dispute which set aside Aganyanya J. (11<sup>th</sup> July 2000)
- d) Two main suit HCC.1639/01 & 83/03 consolidated
- e) Original plaintiffs Isaiah Kiplangat Chalenget granted CIS Mara/11

Motiok 54 land comprising of 2003.5 ha on 11 September 80.

- f) Section 23 RTA Indivisible holder of title
  1. Consent 21.03.07
    - i) no adverse possession claim against original plaintiffs
    - ii) the original plaintiffs is rightful owner
    - iii) parties have encroached on land to vacate
    - iv) further mention on 27 June 07
  2. Main application dated 3 May 07
  3. HCCC.400/03 (O/S) is pending.
  4. Parties then wish to be enjoined to suit now finalized.

Application opposed

- i) The parties can only be enjoined before suit is finalized
- ii) Held – application to enjoin interested parties rejected and dismissed with costs to the plaintiffs/respondents.

g) Case Law - Nil

h) Advocate

M/s Onyango instructed by Ochieng Ohaga & Kibet Advocates for the Plaintiff -present

K.M. Marete instructed by Tobiko & Njoroge Advocates for respondent – present

O. Agina for Ojwang Agina & Associates Advocates for the applicant

**WILLIAM TUEL & OTHERS .....PLAINTIFFS**

**V E R S U S**

**ISAIAH KIPLAGAT .....DEFENDANT**

**R U L I N G**

**I Application dated 3<sup>rd</sup> May 2007**

1. The application dated 3.5.07 brought under a certificate of urgency seeks orders that:-

1.1. \_\_\_\_\_

1.2 The applicants be enjoined as parties in this suit as defendants

1.3. That there be a stay of order made herein on 2<sup>nd</sup> April 2007 pending the hearing and determination of the application.

1.4 \_\_\_\_\_

1.5 Costs .....”

**II Background to the application of 3<sup>rd</sup> May 200**

2. Isaiah Kiplagat Arap cheruyot was granted land parcel C15 – Mara/II Motiok 54 and became a duly registered proprietor on the 11<sup>th</sup> September 1980. This was so done after the land adjudication was carved out in the area during the period 1974-1978. The land parcel was 2003.5 ha.

3. 19 years later a group of persons laid claim on the parcel of land. The matter proceeded to Lands Disputes Tribunal at Olololunga being No.19 of 1998. The Land Dispute Tribunal proceeded with the matter in absence of the registered owner of the land. A claim was lodged at the Nairobi Magistrate Court being case number 7 of 1999 being that two thirds of the land belong to the Maririwa, Sogoo and Olooligero families. Isaiah Kiplagat Arap Cheluget filed a judicial review that set aside the Lands Disputes Tribunals findings Aganyanya J (11.7.00).

4. In 2001, Isaiah Kiplangat arap Cheluget filed suit to evict the respondents. In 2003 the respondents filed suit seeking adverse possession. The two suits were consolidated.

5. When the matter came for the hearing of the main suit the parties on 21.3.07 conceded and finalized the suit by way of a consent. This consent recognized Isaiah Kiplangat arap Cheluget as the registered owner of land parcel C15-Mara/11 Motiok/54. It recognized that the parties from the Sogoo and Marinua groups ranch member had no claim under adverse possession. The parties then agreed that a land surveyor should come and lay the beacons and boundary to the suit land within 60 days. There after all who are found to be encroaching to vacate the land.

6. This consent was entered by parties under their own violation. The matter was to be mentioned before me on 27<sup>th</sup> June 2007 for further orders for confirming compliance.

### **III Issue**

7. On the 3.5.07 a new group of persons calling themselves the Sagamian Community, claimed that they had filed suit being Misc. application N0.400/2003(OS). This suit is said to be an originating summons seeking adverse possession against Isaiah Kiplangat arap Cheluget. ( I have not seen this file).

8. They were surprised at the consent made as it touched upon them. They too would be evicted from the land without in effect being heard. The law of natural justice demands they be heard; as such they prayed to be enjoined to this suit and further for the orders by consent to be stayed. This I believe is to be stayed pending the hearing of their suit Misc. Application 400/03 (OS) that is said to be before Ojwang J for trial. If the orders are not granted, they argued, it will render their suit nugatory.

### **II In reply**

9. The respondent argued that the suit is now finalized. The applicants were never made party to the suit and thus the orders do not effect them.

10. Should the applicants herein be enjoined to be party to this suit?

### **III findings**

11. The parties herein have finalized their suit. The applicant state that they may be effected. I do not see their community names in any of these proceedings nor at the Land Disputes Tribunals case. They have argued to be heard not in this trial court in their respect case Misc. application 400/03 (OS)

Therein trial should not have begun for hearing until these two suits were determined. Now that it has, they are free to be hard in their matters. (see Section 6 of CPA)

a. I decline to enjoin the defendants to this suit. If the suit was pending they, would have sought for consolidation in order to avoid the predicament they now find themselves in.

b. I hereby dismiss the application of 3 May 2005 with costs to the respondent/plaintiff. There will be no cost awarded to the defendant who supported the application. The costs will be paid by the applicant interested parties.

c. I hereby dismiss the application of 3 may 2007 with costs to the respondent/plaintiff. There will be no costs awarded to the defendant who supported the application. The costs will be paid by the applicant interested parties.

**Dated this 30<sup>th</sup> day of May 2007 at Nairobi**

**M. A. ANG'AWA**

## **J U D G E**

### Advocates

M/s Onyango instructed by Ochieng Ohaga & Kibet Advocates for the plaintiff –present

K.M. Marete instructed by Tobiko & Njoroge Advocate for respondent – present

O Agina for Ojwang Agina & Associates Advocates for the applicant- present