



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

LAND CASE NO. 68 OF 2020

ESTATE OF THE LATE

KAPELINGOROK ARIANGATOM

(Represented by

SAMUEL P. KAPELINGOROK and

CHRISTOPHER K. ARIANGATOM.....PLAINTIFFS

VERSUS

CHEPAYOS KEMERINYANG.....1ST DEFENDANT

CHEPKOPEGH GROUP RANCH.....2ND DEFENDANT

RULING

1. The application dated 4/11/2020 and filed in court on 5/11/2020 has been bought under **Section 3 & 3A** and **63(e)** and **Section 13(7) (a)** of the **Environment and Land Act 2011**. The plaintiffs/applicants seek the following orders:-

(a)...spent

(b)...spent

(c) **That upon *inter partes* hearing and determination of the application herein, this Honourable Court be pleased to confirm the order on the preservation of the *status quo*, while pending the hearing and determination of the pending suit.**

(d) **That costs be provided.**

2. The application is supported by the affidavit of **Samuel P. Kapelingorok** sworn on 4/11/2020. The grounds upon which the application is made are that the late Kapelingorok is **member no 9** in the **Chepkopegh Group Ranch**; that his land was demarcated in the year **1968** and he and his family occupied it; that he accommodated his younger brother named **Kemerinyang Ariangatom** on a temporary basis in **1981** as the latter sought land within the group ranch; that Kemerinyang vacated the land in **1990** and moved to his own land and never subsequently claimed any land from Kapelingorok up to the time of the latter's demise; that however the 1st respondent laid a claim against Kapelingorok's estate on the allegation that her late husband was entitled to land from that estate which claim the management of the Group Ranch dismissed; that however later the Kipkomo Council Of Elders on appeal ordered that the land be shared equally between the two families yet it had no jurisdiction to make such an order. It is also alleged that a set of proceedings dated **25/5/1998** ordering the land to be shared equally is forged and that the 1st defendant left the suit land in **1991** and has not been in occupation thereof since. It is stated that there has been an attempt to enforce the decision to share the land equally.

3. The 1st defendant filed a replying affidavit sworn on 30/11/2020. She depones that she is Kemerinyang's widow; that her husband is **member no 40** in the group ranch; that the portions of land belonging to her late husband and the plaintiff's father are distinct; that her husband got registered as a member while on that portion; that her family only moved out of the suit land after her husband bought **4 acres** elsewhere and he was buried on the 4-acre portion while the earlier portion remained vacant; that the Executive Committee of the Group Ranch decided that the land be shared out equally between the two brothers' families; that the plaintiff never appealed that decision but came up with another purported decision which was found to be a forgery on investigation; that the subdivision being undertaken is not of the plaintiff's land but of a parcel adjacent to it and thus should not be halted.

4. The 2nd defendant filed a replying affidavit sworn on **7/12/2020** by its chairman certifying that the deceased brothers were its members. He further stated that a visit to the disputed site showed that there were two distinct portions on the ground.

5. In reply to the 1st defendant's replying affidavit the applicants filed further affidavit sworn on **4/12/2020** challenging the grant issued to the 1st respondent as incapable of operating retrospectively and reiterating in substance much of what he had stated before in his first affidavit. He maintained that his father had single handedly cleared the suit land.

Submissions

6. The plaintiffs filed their written submissions on **7/12/2020**. The defendants filed their submissions on **15/12/2020**.

Determination

7. Owing to the great controversy raised by the parties in this matter at this interlocutory stage, I find that there is no possibility of establishing the truth of the matters alleged by the parties and that a substantive hearing of the suit is necessary in order to determine the issues arising. In the meantime it would be necessary to preserve the subject matter of the suit as it is at the present.

8. For the above reasons I grant **prayer no 3** of the application dated **4/11/2020**. The costs of the application shall be in the cause.

9. The parties shall comply with the **Order 11** of the **Civil Procedure Rules** and this suit shall be mentioned on the **25th February 2020** to confirm compliance.

It is so ordered.

Dated, signed and delivered at Kitale via electronic mail on this 4th day of January, 2021.

MWANGI NJOROGE

JUDGE, ELC, KITALE.