Sirng'ewo (Suing as the Personal Representative of the Estate of Kimutai Arap Murei) v County Land Adjudication & Settlement Officer- Trans Nzoia & another; Chumi & another (Interested Parties) (Environment and Land Judicial Review Case E001 of 2025) [2025] KEELC 4312 (KLR) (9 June 2025) (Judgment)

Neutral citation: [2025] KEELC 4312 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

ENVIRONMENT AND LAND JUDICIAL REVIEW CASE E001 OF 2025

CK NZILI, J

JUNE 9, 2025

IN THE MATTER OF AN APPLICATION TO REVIEW THE DECISION OF THE COUNTY LAND ADJUDICATION & SETTLEMENT OFFICER-TRANS NZOIA

AND

IN THE MATTER OF LAND PARCEL NUMBER KARARA/BORORIET/79

BETWEEN

ABRAHAM ASMAN SIRNG'EWO (SUING AS THE PERSONAL REPRESENTATIVE OF THE ESTATE OF KIMUTAI ARAP MUREI) .... APPLICANT

AND

COUNTY LAND ADJUDICATION & SETTLEMENT OFFICER- TRANS NZOIA .... 1ST RESPONDENT

THE DIRECTOR OF LAND ADJUDICATION .... 2ND RESPONDENT

AND

SAMUEL KIBET CHUMI .... INTERESTED PARTY

ANDREW CHEMAIGUT .... INTERESTED PARTY

JUDGMENT

1. Through an originating motion dated 24/1/2025, the court is asked to issue:

(a) Temporary orders of injunction, barring and restraining the 1st respondent from further proceeding with the hearing, determination, and or adjudication of the dispute on ownership of Parcel No. Karara/Bororiet/79, measuring approximately 10 acres.

(b) A temporary injunction restraining the 1st respondent from the exercise of surveying and subdividing Parcel No. Karara/Bororiet/79, pending hearing of this motion scheduled to take place on 30/1/2025.

(c) An order of certiorari, to remove to this court to quash the proceedings before the 1st respondent, which purports to adjudicate over a dispute on the proprietorship of Parcel No. Karara/Bororiet/79 measuring 10 acres.

(d) A prohibitory order prohibiting the 1st respondent from further proceedings with hearing, determination, and adjudication of the alleged dispute over the proprietorship of land Parcel No. Karara/Bororiet/79.

(e) An order of certiorari to issue, to remove to this court for quashing, the decision of the 1st respondent of 25/1/2025 to survey, demarcate and subdivide Parcel No. Karara/Bororiet/79 on 30/1/2025.

2. The application is based on the grounds on its the face and in a supporting affidavit of Abraham Asman Sirng'ewo sworn on 24/1/2025.

3. The applicant deposes that he was issued with Letters of Administration intestate - Ad Litem, for the estate of Kimutai Arap Murei (deceased), to prosecute the interest of the estate regarding Parcel No. Karara/Bororiet/79, attached as annexure AAS-1. The deponent avers that the deceased was one of the settlers of the Karara Bororiet Settlement Scheme when it was conceptualized and he acquired the parcel in 1975, took possession, and was as such, recognized being a member of the scheme as of 1985 until he passed on in 2008, going by the attached copy of certificate for the group and a map marked as annexures AAS-2 and 3. The deponent avers that after his death, the beneficiaries of the estate have remained in occupation of the suit land to date.

4. It is deposed that the applicant received a letter dated 16/1/2025, through the area chief summoning him and other beneficiaries of the estate to appear before the 1st respondent on 23/1/2025, for "determination" and "direction" on a land dispute, as per the attached letter marked annexure AAS-4. The applicant deposes that when they appeared, the adjudication officer, without cause or lawful authority, decided to survey, demarcate, and subdivide the land, which exercise was to take place on 30/1/2025. The applicant avers that he was aggrieved by the said decision and actions of the 1st respondent, which were unlawful, ultra vires, unprocedural, and unfair, hence violated his right to fair administrative action under Article 47 of *the Constitution*, for being unlawful, ultra vires and procedurally unfair.

5. In particular, the applicant avers that:

(i) He was not furnished with any particulars of the complaint.

(ii) He had no adequate notice of the reasons for the hearing and hence was unprepared for it.

(iii) It was ultra vires, for there is no pending adjudication over the land which was allocated and registered in 2008 and 2011, respectively.

(iv) The area is not an adjudication section within the meaning of the *Land Adjudication Act*, going by an extract of a report of mapping of settlement schemes in Kenya by the National Land Commission, annexed as AAS-4.

(v) The decision was made without such powers to determine a dispute of land ownership.

(vi) He made an adversarial decision without giving reasons, yet the applicant would be affected by the decision.

(vii) The decision is unreasonable as nothing has been pending on allocation since 2008 and 2011, as alluded to above.

(viii) There is no forum to seek redress or appeal other than this court, for the suit parcel does not fall under the *Land Adjudication Act*.

(ix) The decision was arbitrary.

6. The application is opposed by a replying affidavit of Samuel Kibet Chumo, the 1st interested party, on behalf of the 2nd interested party, sworn on 2/2/2025 as per authority to plead as annexure SKC-1. The 1st interested party deposes that he is the administrator of the estate of Cheruiyot Arap Chemuigot as per a Grant of Letters of Administration attached as SKC-2A and 2B. The 1st interested party deposes that the deceased was an allottee of Plot No. 79 Karara Bororiet Farm alongside the applicant's late father, each owning 5.8 acres and 4.8 acres respectively, with 0.4 acres reserved for public utilities.

7. The 1st interested party deposes that the deceased Cheruiyot Arap Chemuigot paid for his share and later on paid the Settlement Fund Trustees loan as per receipts annexed as SKC-3A and 3B. The 1st interested party deposes that the land in question is LR No. 1799/4, known as Karara Bororiet Farm, as per the area list attached as annexure SKC-4. Further, the 1st interested party denies that Bororiet Farm, as referred to by the applicant, exists in the Settlement Fund Trustees' records or even at the Registrar of Companies, as per the verification letters attached as annexures SKC-5A, 5B, and 5C.

8. Similarly, the 1st interested party deposes that the officials of Karara Bororiet Farm never issued share certificates to its members as alleged by the applicant and have since confirmed that the share certificate displayed before this court by the applicant is false, for it did not emanate from them going by the affidavit of the officials annexed as SKC-6A and 6B. The 1st interested party deposes that the applicant's late father was yet to pay the Settlement Fund Trustees loan, to facilitate the discharge of the plot and for title deeds to be issued to co-owners.

9. The 1st interested party avers that the subdivision of Plot No. 79 was initially intended to be done away with back in 2013. However, the applicant's family kept on procrastinating the process on the ground that the family had yet to obtain letters of administration for the late Kimutai Asman Arap Murei, as per the correspondence and a survey payment receipt annexed as SKC-7A, 7B, and 7C; hence, it cannot be correct that the applicant was not aware that Plot No. 79 ought to be subdivided.

10. Further, the 1st interested party denied that the settlement office is handling adjudication disputes since the records held by the Settlement Fund Trustees clearly indicate that the plot has two allottees whose shares are clear. Therefore, the 1st interested party terms the application as misleading, flawed in law, defective, and out to circumvent the cause of justice.

11. The application is also opposed by further affidavits of Kipchumba Chakina Wilfred and Simeon Arap Mutai, sworn on 4/2/2025 and 2/2/2025, respectively. Kipchumba Chakina Wilfred deposes that he owns Plot No. 44 as per the area list and is also the secretary of Karara Bororiet Farm. He confirms

that the applicant's father and the 1st interested party's father, who are deceased, were jointly allocated Plot No. 79 in shares of 5.8 and 4.8 acres. The secretary refuted the issuance of a certificate of shares, save for receipts showing that the two allottees paid Kshs.34,000/= and Kshs.10,000/=, respectively. On his part, Simeon Arap Mutai clarified that he owns Plot No. 85 as per the area list marked SKC-4 and was also a former treasurer of the Farm.

12. Whereas the respondents were served with the application and appeared in court on 4/2/2025, where they prayed for 14 days to file a replying affidavit, there is no evidence of filing any replying affidavit. Equally, there is no evidence of filing written submissions as of 28/2/2025.

13. The issue calling for determination is whether the applicant has discharged the burden of proof that the respondents acted contrary to the tenents set under Article 47 of *the Constitution*, as read together with the *Fair Administrative Action Act*.

14. The applicant has brought a judicial review application under the Fair Administration Act and the Rules made thereunder in 2024. His primary complaint is that the 1st respondent summoned him by a letter dated 16/1/2025, through the area chief, together with the beneficiaries of the deceased's estate, and upon appearing on 23/1/2025, the 1st respondent without cause, lawful authority, or giving him notice of the hearing, made a decision that he would survey, demarcate and subdivide Plot No. 79 Karara Bororiet Farm. He terms the intended exercise as illegal, ultra vires, unreasonable, unprocedural, unfair, and aimed at interfering with his right to property and fair administrative action, whose allocation and registration were undertaken in 2008 and 2011, respectively. The applicant urges the court to call for the proceedings and the decision and find the same ultra vires, illegal, unfair, and unreasonably made.

15. The 1st interested party terms the allegation by the applicant as false, given that the land was jointly allocated for defined shares of 5.8 acres, 4.8 acres, and 0.4 acres among the 1st interested party's late father and the applicant's late father and for public utilities. Therefore, the 1st interested party avers that the subdivision is necessary for the 1st interested party to obtain his independent share, which exercise the applicant has been and was privy to; hence, the letters sent for the exercise which is thus procedural, lawful and regular, but unfortunately, the applicant has been procrastinating for a long period of time.

16. The applicant does not refute the contents of the 1st interested party's replying affidavit and further affidavits. Similarly, the applicant does not dispute the annexures attached as SKC-1, 2A, 2B, 3A, 3B, 4, 5A, 5B, 5C, 6A, 6B, 7A, 7B, 7C.

17. It appears that the 1st interested party had requested for the subdivision by a letter dated 20/8/2014 to the 1st respondent, through the officials of Karara Bororiet Farm. The said request was communicated to the applicant through the area chief in a letter dated 22/8/2014. Payment for the exercise was made on 20/8/2014, as per annexure SKC-7C. The applicant acknowledges receipt of a letter dated 16/1/2025 through the area chief. The letter mentions that a dispute was handled on 17/10/2024. All that the fresh letter was seeking was attendance as a follow-up to the earlier meeting. The committee members of the Farm were also copied in the letter.

18. The applicant is blaming the 1st respondent for ambushing him with a hearing. He says that he had no idea who and what the complaint was all about. From the correspondences and documents attached by the 1st interested party, it is evident that the purpose of the proceedings was to partition Plot No. 79, to severe the shares of the two parties on the ground. The 1st interested party has produced receipts issued for Kshs.36,500/= dated 10/4/2013, for Plot 79 Karara Bororiet Farm paid to the Settlement Fund Trustees.

19. From the area list, Plot No. 79 is shared by Chemangut Cheruiyot and Kimutai Asman A. Murei. It measures 4.45 Ha. The area list was forwarded to the 2nd respondent by the 1st respondent vide a letter dated 7/2/2018.

20. The applicant does not refute the contents of the area list and the letter forwarding it as not authentic, including the acreage. The officials who verified the area list are similar to those who signed the letter requesting for partitioning of the plot, so that the two joint owners can have individual land parcels.

21. The 1st interested party has sworn on oath that the applicant is yet to pay any allocation fee to the Settlement Fund Trustees. Allocation and registration of a parcel of land in a settlement scheme is both a matter of fact and law. Unless an allottee has accepted the letter of offer or allocation and paid the requisite statutory fees, he cannot be said to be a bona fide owner of the land. Mere occupation without compliance with the terms and conditions of the letter of allocation give no proprietary rights or interests in the land protectable under Article 40 of *the Constitution*. See Ali Mohammed -vs- David Gikonyo Nambacha & Another (Kisumu HCCA No. 9 of 2009, Jeremiah Musembi Kikuvi -vs- Ali Ibido Yusuf & 2 others [2016] eKLR, James Mathuva Makewa -vs- Nzavi Ngului [2021] eKLR and Rosa Tala Chepkongor -vs- Daniel Cherogony [2022] eKLR.

22. The applicant urges the court to find that his constitutional rights were violated and he is being denied the right to own land, since the 1st and 2nd respondents want to subject it to allocation and registration, yet they do not have such powers that process was undertaken in 2008 and 2011.

23. What the applicant is not telling the court is whether he has complied with the terms and conditions regarding ownership of land in a settlement scheme through payment of requisite fees for the acreage allocated. A court of law is there to enforce contracts as per the terms and conditions agreed by the parties. See H.F.C.K. Ltd -vs- Gilbert Kobe Njuguna Nairobi HCC No. 1607 of 1999. What the 1st interested party had called the 1st and 2nd respondents to undertake is a statutory duty governed by Sections 134 and 135 of the *Land Act* on settlement schemes.

24. Regarding the 2017 re-planning and surveying which resulted into a subdivision of a plot to cater to the interest of a co-owner is allowed by law. It cannot be termed as an illegal or unconstitutional exercise. Re-planning and surveying, which was to be undertaken, has arrived at resolving the controversy between the 1st interested party and the applicant. See Nderitu & Another (Representative of the estate of Stanley Nderitu Ngari) -vs- Settlement Fund Trustee & Others (Civil Appeal 242 of 2012 [2022] KECA 830 [KLR] (29 July 2022) (Judgment).

25. The applicant asks the court to issue orders of certiorari, prohibition and a temporary injunction to quash the proceedings and stop the respondents from undertaking a statutory duty.

26. In Arthur Matere Otieno -vs- Dorina Matsanza [2003] eKLR, the court observed that the repossession, cancellation, and reallocation had not correctly been done as the preserve to repossess or forfeit the land was the Central Land Board, to effect personal service of default upon the defaulters, accompanied by minutes for the process. The court observed that a title vested in the Settlement Fund Trustees, any sale could only occur with the consent of the title holder.

27. In this matter, the applicant is blaming the respondents for usurping powers that they do not possess. The court is asked to issue an order of certiorari to quash the proceedings and the decision, a prohibition or temporary injunction to stop any attempts to subdivide the land. In Pastoli -vs- Kabale District Local Council & Another [2002] 3 EA 200, the court observed that to succeed in judicial review, an applicant has to show that the decision or act complained of is tainted with illegality, is irrational, there was procedural impropriety and is unreasonable.

28. In Republic -vs- District Land Adjudication Officer Tana Delta District & Another Ex-parte; Paul Mariga & Others [2014] eKLR, the court cited Kenya Anti-Corruption Commission -vs- Geoffrey Gathenji Njoroge & Others, Civil Appeal No. 266 of 1996 and Meixner & Another -vs- Attorney General [2005] 2 KLR 189, that a decision of a body or person can be upset through certiorari on matters of law, if on the face of it, it was made without jurisdiction or is consequence of an error of law. The court observed that before the enactment of the *Land Act*, the law that mandated the government to establish settlement schemes was the Agriculture Act, which unfortunately had not provided how people were to be identified for resettlement by the Settlement Fund Trustees. However, the court said that as a policy decision and practice, persons living on the land meant to settle the landless ought to be given priority during the identification of the beneficiaries.

29. The court said that the practice involves :

    (a) Acquisition of the land by Settlement Fund Trustees.

    (b) Preparation of a scheme plan, which includes planning, surveying and preparation of survey plans to guide the allocation.

    (c) Identification of beneficiaries and verification of squatters by the District Plot Selection Committee.

    (d) Sending the list for approval by the Director.

    (e) Allocation of land by issuance of letters of offer.

    (f) Charging the land by Settlement Fund Trustees.

    (g) Beneficiaries are told to either make full payment or at least 10% of the required amount.

    (h) Preparation of the title documents in favor of the beneficiary upon making full payments as required by Settlement Fund Trustees.

30. The court held that it court could not compel such an officer to do what the law had not provided for, or on the manner he should exercise his statutory discretion. Further, the court observed that it could only issue a relief of certiorari where the applicant proved that in refusing to allocate them land, the respondent had acted illegally, irrationally, unprocedurally, or without jurisdiction. It is trite law that a party to a suit or proceedings must make material disclosure, especially in an application for a temporary injunction. In Paul Gitonga Wanjau -vs- Gathuthi Tea Factory Co. Ltd & Others [2016] KEHC 7263 KLR, the court cited Kenleb Cons Ltd -vs- New Gatitu Service Station Ltd & another [1990] KEHC 53 (KLR), that to succeed in an application for an injunction, an applicant must not only make full and frank disclosure of all the material facts for just determination of the application, but also show that he has a right, legal or equitable, which requires protection by way of an injunction.

31. A party coming to court must, therefore, disclose all facts regardless of whether they are prejudicial to its case. Bona fides is key. If the court finds later that a party procured an order by misrepresentation or concealment of material facts, it may set aside such orders. See Republic -vs- Kensington Income Tax Commissioners; Ex-parte Princess Edmond De. Polignac [1917] IKB 495, cited with approval in Nesco Services Limited -vs- Ethics & Anti-Corruption Commission Act (Application E137 of 2023) [2024] KEHC 5217 (KLR) (Judicial Review) (18 May 2024) (Ruling).

32. From the materials attached to the interested party's affidavit in reply, it is clear that the applicant was privy to and was well aware of the purpose for which the respondents had summoned him. The dispute on whether to subdivide the plot has been on since 2014. The applicant has not sworn a supplementary

affidavit to deny knowledge of and the purpose of the intended meeting, deliberations and the outcome going by the correspondences attached. The non-payment of the standard premiums for the land to the Settlement Fund Trustees renders any letter of offer held by the applicant invalid.

33. In Botwa Farm Co. Ltd -vs- Settlement Fund Trustee & another [2015] KEELC 348 (KLR), the court observed that the mandate of Settlement Fund Trustees was initially provided under Section 167 (2) of the Agriculture Act, (now repealed); to manage and dispose of movable and immovable property, including entering into such contracts as it may deem necessary. Subdivision of land by the Settlement Fund Trustees is a statutory objective. Resolving disputes among allottees of land in a settlement scheme was, therefore, within the mandate of the respondents.

34. By calling upon the disputants to attend the meeting to resolve and effect the subdivision, as per the shares held by each party, the respondents cannot be said to have been out to deprive the applicant his land, under Article 40,3(a) and (b),(ii) of *the Constitution*.

35. The area list attached to the interested parties' affidavit shows the correct acreage due to the applicant. I therefore find there is no evidence of the alleged breach of the rights of the applicant. See Samuel Cheruiyot & Another (Suing as Administrator of the estate of Esther Cheruiyot) & Another -vs- AIC, Ainabkoi Branch Church & Others [2022] eKLR.

36. The interested parties have equal rights, which are equally protected by law. The Settlement Fund Trustees must keep an inventory of the land and account for it. The burden was upon the applicant to show how the respondents infringed on his rights in breach of the law. No evidence has been tendered to sustain the allegation that the respondents acted ultra vires, failed to give notice for the intended action, undertook illegal proceedings, and made a decision tainted with illegality, irrationality, and procedural impropriety. The court cannot, without basis, stop the respondents from undertaking the statutory obligations to survey, demarcate, and subdivide Parcel No. Karara/Bororiet/79, into the bona fide shares belonging to the interested parties under Sections 134 and 135 of the *Land Act*.

37. The upshot is that I find the originating motion dated 24/1/2025 incompetent, lacking merits, and an abuse of the court process. It is dismissed with costs to the interested parties.

JUDGMENT DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT KITALE ON THIS 9TH DAY OF JUNE 2025.

In the presence of:

Court Assistant - Laban

Lichuma for Interested Party present

Kipruto for Exparte applicant present

Chelagat for Odeyo for respondents present

HON. C.K. NZILI

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JUDGE, ELC KITALE.