



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT ELDORET**

**LAND SUIT E & L NO. 267 OF 2016**

**ROBERT KIPROP CHELAGAT (Suing as the legal administrator of Estate of  
CHERONO KIPNYINYEI 9DECEASED).....PLAINTIFF**

**-VERSUS-**

**NATIONAL LAND COMMISSION.....1<sup>ST</sup> DEFENDANT**

**COUNTY LAND MANAGEMENT**

**BOARD-BARINGO COUNTY.....2<sup>ND</sup> DEFENDANT**

**SILVANO KANDIE.....3<sup>RD</sup> DEFENDANT**

**KAPLOP PRIMARY SCHOOL.....4<sup>H</sup> DEFENDANT**

**RULING**

On 19/9/2016, Robert Kiprop Chelagat, suing as the legal administrator of the Estate of Cherono Kipyonyei (Deceased) sued the National Management Board Baringo County and Silvano Kandie the 3<sup>rd</sup> Defendant and Kaplop Primary School was later enjoined as the 4<sup>th</sup> Defendant claiming that on or about 22/08/2016, the 3<sup>rd</sup> defendant convened a meeting at Kaplop Village and purported to have a claim of all that parcel of land known as SACHO/KABASIS/86 on behalf of an adjacent school known as Kaplop Primary a school for which the plaintiff is not aware.

On 25<sup>th</sup> August, 2016, the 3<sup>rd</sup> defendant convened meeting at the same venue and invited the 1<sup>st</sup> defendant purported to be in the process of annexing part of the estate of Cherono Kipyonyei (deceased) without consulting the plaintiff who is the legal administrator of the estate of the deceased.

The plaintiff has now learnt that the 2<sup>nd</sup> defendant has written to a purported Board of Management of Kaplop Primary School to take over the estate of the deceased and they are now in the process of doing so.

The Plaintiff has further established that the 4<sup>th</sup> Defendant which is not a registered entity claims to be the owner of all that parcel of land known as SACHO/KABASIS/86 and the plaintiff states that the claim is misleading and unfounded.

The plaintiff avers that all that parcel of land known as SACHO/KABASIS/86 comprised in the estate of Cherono Kipyonyei (deceased) does not comprise a public utility in its entirety or any part thereof and avers that the acts of the defendants amounts to inciting members of the public against the family of the deceased.

The plaintiff avers that the acts of the defendants are illegal and not founded in law and at most amounts to incitement and abuse of office.

Further, the plaintiff states that the 3<sup>rd</sup> defendant being a resident of Sacho has taken upon himself to mislead the 1<sup>st</sup> defendant on facts very well known to him that the land does not belong to one Laban Lambert but belongs to the estate of Cherono Kipyonyei (deceased) and as a result of his misrepresentation, the 1<sup>st</sup> defendant abdicated its responsibility to exercise due diligence thereby failing to conduct the necessary official search to authenticate ownership.

The plaintiff avers that the 3<sup>rd</sup> defendant having a better knowledge of the estate has continued to make utterances that mislead the public to the effect that part of the estate is a public utility and shall state that the 3<sup>rd</sup> defendant is pursuing a personal agenda for which he should be held personally liable.

The plaintiff shall state that unless the defendants are restrained by an order of this Honourable Court by themselves, their servants, agents and/or employees, the members of the public shall invade the estate of the deceased and cause a breach of the peace.

The Plaintiff prayed for a **declaration order that all that parcel of land known as SACHO/KABASIS/86 exclusively belongs to the estate of Cheron Kipyonyei (deceased).**

**Moreover, a declaration that the letter of the 1<sup>st</sup> and 2<sup>nd</sup> defendants dated 25<sup>th</sup> August, 2016 addressed to the 4<sup>th</sup> defendant giving the suit property to the 4<sup>th</sup> defendant is a nullity in law and an order compelling the 1<sup>st</sup> and 2<sup>nd</sup> defendants to withdraw and retract the content of its letter dated 25<sup>th</sup> August, 2016 to the 4<sup>th</sup> defendant. An order for an injunction restraining the defendants by themselves, their servants, agents and/or employees from claiming, alienating or in any other way interfering with the estate of Cheron Kipyonyei comprised in all that parcel of land known as SACHO/KABASIS/86 or any part thereof.**

**An order of an injunction restraining the 3<sup>rd</sup> defendant in his individual, capacity from uttering or inciting members of the public to take over the estate of the deceased. Costs of this suit.**

The 4<sup>th</sup> Defendant filed a defence and counter claim denying the claim and claiming proprietary estoppel. The 4<sup>th</sup> defendant prayed for Judgment thus:

- a) A declaration that the 4<sup>th</sup> Defendant have acquired title to the one acre portion they are in occupation in land referenced SACHO/KABASIS/86 by adverse possession and/or by way of proprietary estoppel against the plaintiff.**
- b) A permanent injunction restraining the 4<sup>th</sup> Defendant either by himself/through his servants and/or agents from entering, clearing, cultivating, plaintiff, grazing animals, demolishing, altering and/or in any way interfering and/or continue to interfere in any manner with the 4<sup>th</sup> Defendant occupation and quiet possession of the parcel registered as SACHO/KABASIS/86.**
- c) An order directing that the Plaintiff to transfer the one acre of land that the 4<sup>th</sup> Defendant is occupying in land referenced SACHO/KABASIS/86.**
- d) Costs of this counter-claim.**
- e) Any other further relief that this Honourable Court may deem fit to grant.**

This matter was part heard when the parties recorded a consent in the following terms:

- 1) That the plaintiff agrees to give to the 4<sup>th</sup> Defendant, Kaplop Primary School, one (1) acre from land parcel number, LR No. SACHO/KABASIS/86 being the share of Laban Rono.
- 2) The County Land Surveyor-Baringo County assisted by the County Land Registrar-Baringo County do visit the disputed parcel of land, LR No. SACHO/KABASIS/86 and excise out one (1) acre for the school, subject mutual acceptance of the parties on the location of the said one (1) acre.
- 3) The County Land Surveyor to file a report in this court with all the proposed drawings within 30 days from today.

The County Surveyor and Land Registrar Baringo visited the suit-land and made a report. I have considered the submissions on record and do find that the 4<sup>th</sup> Defendant is entitled to one acre comprised in SACHO/KABASIS/86. The 4<sup>th</sup> Defendant is a school that comprises very young children and therefore it is in public interest the safety be considered. According to the school an area that comprises a cliff will endanger their safety. I do direct the 4<sup>th</sup> Defendant's one acre to be hived from SACHO/KABASIS/86 as per diagram 3 of the surveyor's report. That the plaintiff do sign all relevant documents to facilitate the partition of land parcel SACHO/KABASIS/86 to hive the said 1 acre in default the Deputy Registrar of this court be authorized to sign the relevant documents; That the plaintiff do sign all relevant documents to facilitate the transfer of the 1 acre hived from land parcel SACHO/KABASIS/86 to 4<sup>th</sup> defendant in default the Deputy Registrar of this court be authorized to sign the relevant documents. Each party to bear his/its own costs. Orders accordingly.

**SIGNED, DATED AT KISUMU THIS 26TH DAY OF APRIL, 2021.**

**A. O. OMBWAYO**

**JUDGE**

**DELIVERED AND SIGNED AT ELDORET THIS 5<sup>TH</sup> DAY OF MAY 2021**

**S.M. KIBUNJA**

**ENVIRONMENT & LAND**

**JUDGE**