



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

LAND CASE NO. 85 OF 2014

APUO LOMETET

(Suing on behalf of the Estate of the late

LOMETET LOTIM).....PLAINTIFF

VERSUS

JULIUS K. LONGOROKWANG.....1ST DEFENDEANT

LIMAKORI MERIL.....2ND DEFENDANT

LEMUKORU MERIL.....3RD DEFENDANT

KORKOU MERIL.....TH DEFENDANT

JUDGMENT

INTRODUCTION

1. By a Plaintiff dated **19/5/2014** and filed in court on the same day, the plaintiff sought for the following orders:

(a) A declaration that the land currently occupied by the Plaintiff and the family of LOMETET within KANYARKWAT GROUP RANCH belongs to LOMETET whose membership Number within KANYARKWAT GROUP RANCH IS 125

(b) A Permanent injunction restraining the defendants their agents/and/or servants from laying any claim or interfering in any manner with the land currently occupied by the plaintiff and LOMETET family within Kanyarkwat Group Ranch.

(c) Costs of this suit.

(d) Any other relief that this court may fit to grant

PLEADINGS

2. The Plaintiff filed his plaint on the **19/5/2004** while the Defendants filed their joint Defence dated **16/6/2014**, the Plaintiff filed a Reply to Defence dated **3/7/2014** on **4/7/2014**.

3. The main suit was heard first heard by my brother Obaga J. and I took over from him and proceeded with the hearing. The hearing of this matter begun on the **18/2/2016**, **14/11/2017**, **19/9/2018**, **12/3/2019**, **14/5/2019** and on **15/2/2020**. The Plaintiff filed his submissions on the **25/11/2020** and the Defendants filed theirs on **4/12/2020**.

The Plaintiff's Case

4. According to the Plaintiff, the Plaintiff's case is that he is a son of the late **Lometet Lotim** who was a member of **Kanyarkwat Group Ranch** and owned land in the said group ranch since **1960's**; that his late father was a resident of Apuo in West Pokot County; that his father had a brother known as **Merii Lotim** (also deceased) who is the father of the defendants; that during their lifetime, his father and that of the defendants had land parcels at Kanyarkwat Group Ranch; that **Lometet Lotim's** Membership Number is **125** whereas **Merii Lotim's** Membership No. is **232**; that the lands were separated by a river and that they have been staying on their father's distinct portions separated

by a river since **1960's**; that the defendants trespassed into portions he occupies and started claiming that part of the land occupied by his family belongs to them; that the Defendants and those claiming under them have threatened to forcibly enter and put up structures on the property legally supposed to benefit the plaintiff and their family; that if that happens, the plaintiff and his family is likely to lose their property to the defendants; that he prays for the orders in the plaint be granted with costs of the suit.

The Defendants' Case

5. The Defendants' jointly denied the claim and stated that the late **Lometet Lotim** (the plaintiffs' father) never owned land at Kanyarkwat Group Ranch; that the plaintiffs' father had parcels at Kapkoris and Katikomor where he resided; that in **1960s'** Merii Lotim invited Lometet Lotim to reside temporarily as a visitor and brother; that the plaintiffs' father was shown where to build but would later vacate; that despite Lometet Lotim being a registered member, he was never given any parcel of land because he was at Kapkoris when members were shown land; that survey has not yet been carried out to enable a member know the distinct boundaries and that they jointly pray that the plaintiff's suit be dismissed with costs.

6. In a quick rejoinder, the Plaintiff filed a reply to defence dated **3/7/2014** whereof he denied all allegations raised in the defence.

7. The hearing of this matter commenced on the **18/2/2016** before my brother Hon. E. Obaga. PW1, **Apuo Lomete** who is the Plaintiff gave his testimony and stated that he obtained Limited Letters of Administration for the estate of his father (**P. Exhibit 1**) before filing this suit; that the plaintiff's family comes from Kanyarkwat Group Ranch; that his deceased father was called Lometet; that he went to the Land Adjudication Office where he was given his father's membership number; that his father was member No. **125** at Kanyarkwat Group Ranch; that the defendants' father was member **232**; that his father had two brothers one was called Merii Lotim and five sons; that the defendants are sons to his uncle; that the defendants' father had a separate land but the defendants left their home and came to settle where he is at Kanyarkwat on his fathers' land; that he had an extract of the registered members and a copy of register of members of Kanyarkwat; that the defendants invaded his father's land and constructed his father's land and even assaulted him; that the defendants were charged in Kapenguria; that the case ended but he does not know its final outcome; that he prays for a declaration that the land which the defendants have invaded belongs to his father who was member No. **125** and an injunction against the defendants restraining them from interfering with the land belonging to his father. He averred that the dispute has never been arbitrated by the committee of Kanyarkwat Group Ranch.

8. Upon cross-examination, PW1 in reference to **MFI.2** and **3** confirmed that the documents only show membership numbers but not plot numbers; he also confirmed that Kanyarkwat Group Ranch has not been demarcated; that he does not know the acreage of his father's land; that he does not know the boundaries of his father's land; that he came to court because the defendants invaded his father's land and assaulted him; that he has never appeared before the local chief; that he was not called to the Chief of Kanyarkwat on **12/09/2012**; that he was not aware that the chief's meeting resolved that the land in dispute belongs to Lomet Merii; that he heard that people were called to the chief's office; that he did not attend the chief's meeting; that Chemali Lometet is his nickname; that he does not know one Lokim Lometet. In reference to minutes of a meeting held on **5/6/2014** being he confirmed that he did not attend the meeting of **5/6/2014**; that he was not aware that the meeting resolved that the land in issue belongs to the defendant's family; that he is not aware of a meeting held at the chief's office on **12/3/2012**; when shown letter dated **26/3/2014** one dated **14/4/2014** and that dated **30/4/2014** PW1 said that it is not true that he brought this case to court after he lost in the arbitration process on the ground and lastly that he does not have any document to show that the land belongs to his father.

9. In re-examination by Mr. Kaosa Advocate, PW1 said that there is a river which separates his father's land from the defendants land; that the two plots do not border each other; that he has never attended any meeting at the Chief's Office; that the chairman of the group ranch is called Limangura; that he is not aware that the verdict by the chief is not dated and signed; that it is the committee of the group ranch who are mandated to resolve any disputes between the ranch.

10. **PW2 - Pius Kachute** testified on **18/2/2016** his evidence was that he is a former Chief of Riwo Location from **1980**; that the Location is within Kanyarkwat Group Ranch; that he knows the family of Merii Lotim and Lometet Lotim; that the two men have since died but they left behind children; that the two families are within Kanyarkwat Group Ranch; that he never handled any dispute between the families; that the land belonging to the two families is separated by a river; that one family is the other side of the river and the other on the other side of the river; that each family should remain where they were before their fathers died; that Merii Lotim was occupying No. **232** and Lotim Lometet on No. **125**; that once it is registered, it is as good as having land; that when demarcation is done there will be no movement; that one is given land according to the registration numbers; that all disputes are supposed to be resolved by the committee of the group ranch and that a chief has no mandate to resolve any dispute.

11. Upon cross-examination by Ms. Arunga, PW2 confirmed that Kanyarkwat Group Ranch land has not been demarcated; that the boundaries have not been put in place; that he does not know the acreage of Lotim Lometet's land; that he cannot know if Merii's plot went beyond the river; that the chairman of Kanyarkwat Group Ranch is Limangura. He confirmed that according to the minutes of the meeting of **7/12/2012**, the chairman of the group ranch was present; that he is not aware that the chief's office has resolved that the land belongs to the family of Merii and that any dispute arising in the group ranch is supposed to be resolved in accordance with the law.

12. **PW3, Losiangep Nguruiyee**, testified on the same date as **PW1** and **PW3**. His evidence was that he comes from Kanyarkwat Group Ranch; that he is a committee member of Kanyarkwat Group Ranch; that he knows the family of Lometet and Merii; that the fathers of the Plaintiff and the defendants had land in the ranch; that Lometet's family had plot No. **125** and Merii's family plot No. **232**; that once someone is registered as a member, he is entitled to land; that the group ranch has not been demarcated; that each group ranch member has his own plot where he/she lives; that there are no boundaries which have been put in place, that the land of Lometet and that of Merii is separated by a river.

13. Upon cross-examination by Ms. Arunga Advocate, PW3 confirmed that he did not have any document to show that he was a committee member of Kanyarkwat Group Ranch; that he is member No. **286** in the ranch; that he did not have any document to show that he owns a plot at the ranch; that he knows Birinda village and that it's true that he stays at Birinda which is **10** kilometers away; that his land borders that of the plaintiff and the defendants; that he does not know the acreage of the land of the plaintiff and the defendants and that the land in Kanyarkwat has not been surveyed.

14. On re-examination, PW3 clarified that there is no difference between membership number and plot number and that his land borders that of Lometet.

15. **PW4, Charles Onguso Mbaya** testified on the **14/11/2017**. His evidence is that he works in the Land Adjudication Department in West Pokot County; that he had worked with the department for **20** years; that his office keeps group ranch records; that he had the Kanyarkwat Group Ranch register for the **1970's**; that membership No. **125** according to that register belongs to Lotim Lometet and member No. **232** belongs to Lotim Merii and that the two own shares in the same group ranch; that they must be entitled to two different portions; that membership means someone has some land on the ground; that they have their own elders who show them where their plots are within the ranch; he identified and produced a certified copy of the register in respect to membership No. **125** as **P. Exhibit 2** and a certified copy in respect to No. **232** as **P. Exhibit 3**; that adjudication has not been done; that when they indicate members it means that a person is entitled to some land on the ground; that the land portions represented by the membership numbers are not at the same location.

16. Upon cross-examination by Ms. Arunga, PW4 confirmed that adjudication has not been done; that there are no parcel numbers for individuals; that there are no beacons; that there is no map showing boundaries; that the exhibits **P. Exhibit 2** and **3** only certify that the persons are members of Kanyarkwat Group Ranch; that the number means a membership number; that adjudication has not been done; that the Group ranch holds only one title over the entire group ranch land which is not sub-divided; that he has not visited to the site of the dispute; that he does not know the boundaries or acreage; that group ranch committee members show members the plots on the ground; that a group ranch is meant for people who jointly own that land for grazing purposes; that it is communal land for grazing and living in; that it is used for grazing until adjudication is done after which each person then gets a parcel; that a person has proprietorship as he belongs to the group ranch; that they have had a public baraza and adjudication will be done soon.

17. On re-examination, he clarified that the members have houses on the ground; that people are living there; that they have been shown where they are supposed to live; that the members are usually given land where they are living; that no one on the ground is supposed to be left out but should get land.

18. On the **19/9/2018** and on **4/2/2019**, **Limangura Lotunale PW5**, gave his testimony. He adopted his statement dated **19/4/2018** as his evidence in chief; he stated as follows: that he lives at Kanyarkwat in West Pokot at Kanyarkwat Group Ranch; that he has a parcel of land there; that he is a farmer now though he was the first assistant chief there and later the chairman of the group ranch when he was elected in **2001** by Pokot residents in the area; referring to **DMFI 4** - an record of a meeting of **7/9/2001** he stated that he was the chairman from **2001** to **2007**; that his membership number is **171**; that he knows Lometet Lotim's family; that Merii is the elder while Lometet is the younger of the two who are brothers both now deceased and it is their children in court; that each person had their own piece of land and there was no dispute between the families when he was the chief; that he knows all of the children of the two deceased and that no dispute between the children has been brought to him ever since; that the two families live on their separate pieces of land on either side of the river running between them which river is the boundary; that the pieces of land are of different numbers; that he lives far from the site of the dispute; that he is member No. **171** and is listed as the first participant in the minutes dated **7/9/2001** which he produced as **P. Exhibit 5**. He produced list of members of Kanyarkwat Group Ranch as **P. Exhibit 6**.

19. Upon cross-examination, he confirmed that Chepochelopoi Lometet is not his sister; she is sister to Lometet Lotim ; that he was biased in favour of any side; that he lives at Karenger; that he does not know how far it is from Kanyarkwat; that it is like **20** km away; that Lometet's land is located at Napawoi; that no dispute from Merii has ever been brought to him; that he had not visited Merii's Land; that there were clashes between Pokots and Ugandans at one time; that he does not know that Merii's family accommodated the Lometet family during those clashes.

20. That marked the close of the Plaintiff's case.

Defence Case

21. On the **12/3/2019**, **DW1, Julius Kibiego Longorokwang** gave his evidence that he lives at Kanyarkwat in West Pokot; that the **2nd**, **3rd** and **4th** defendants are his uncles; that his father was called Longorokwang Merii; that Merii Lotim was his grandfather; that Lometet Lotim is brother to Merii Lotim, borne of the same biological parents; that Apuo Lometet is son of Lometet; that Merii Lotim had land in Kanyarkwat group ranch about **100** acres but the land is not yet surveyed; that there are membership numbers; that Merii Lotim is No. **232**; that the parcels are together; that Longokwang had **3** wives and that his mother, Margaret Longokwang, is the first wife; that they have lived on the land as children of Longokwang Merii since birth; that their first born is **57** years; that Lometet Lotim had land at Kanyarkwat Group Ranch at Katikomor; that their area is called Napawoi Apuo village; that Lometet Lotim's membership number is **125**; that the family has now moved into their land; that in **1976-1978**, there was insecurity - Sebei's from Uganda invaded the Pokot land and displaced the Kenyan Pokots and those displaced came and settled near them; that later they were all affected and dispersed; that Lometets went to Kapenguria and the Meriis went to Trans-Nzoia and bought land; that Longokwang's family went and bought land in Keringet; that long after that, peace returned and people returned to their land; that when they went they found the Lometet's had already gone back and settled on their land; that they tried to resolve the issue peacefully as a family; that they returned to the areas where they had bought land as they were violent ; that the matter was not amicably settled; that they went to the chief Kanyarkwat location; that he summoned and scheduled a meeting for **12/9/12**; that the chief and assistant chief and village elders, Merii's family and Lometet's family attended the meeting; that there were **4** persons from Lometet's side while Merii's family was represented by **31** people, there were **30** neighbours in attendance; that he was the first one to address the gathering; that Musa Lometet spoke on behalf of the Lometet's family; that he said that he was young and could not give the history; Longarkoru Lotim, brother of Merii and Lometet was called to speak and said that the land is Merii's and not Lometet's and he gave a history of the land; that Chief called witnesses; that one Longaria Tangokwang and Losiarep Ngoriapus also spoke; that the resolution was that each party goes back to their own land; that the chief stamped the minutes; that after **September 2012**, the family of Lometet never vacated the land though they were told to vacate; that later when the Merii family went to build on the land they were chased away by the Lometet's; that they were arraigned in court in **Criminal Case No. 1078/2012** in Kapenguria; that he was charged alongside his four brothers; that the case went on till **2013** when they were acquitted; that later they went back to the chief and updated him; that the Chief held another meeting on **7/12/2012**; that **10** elders and the Merii family and villagers were present ; that the date was taken with the participation of O.C.S; that the Lometets never attended ; that at that meeting the previous decision was not altered but the Lometets continued living on the land; that they later got a letter from the advocate dated **31/3/2014 (D.Exhibit 3)** which was addressed to the Ministry of Lands; that they

had complained at the Land Settlement Office to resolve the dispute; that the lands office wrote to the chairman of the group ranch telling him to organize a meeting between the two families. He produced the letter as **D.Exhibit 4(a)**; that he (the chief) also wrote a letter dated **30/4/2014** which he produced as **D.Exhibit 4 (b)**; that the chief asked the chairman to resolve the dispute; that it was intended to resolve the dispute without coming to court; that it is not true that the defendants invaded the plaintiffs land and that the plaintiffs are the ones who invaded the defendants' land; that the Lometet family should return to Katikomor village where their land is; that he prays this court to dismiss their (plaintiffs' case) with costs.

22. On cross-examination, he confirmed that he was born in 1963; that Merii Lotim, his grandfather died in 2000; that the defendants are his uncles; that the membership numbers were issued during registration in **1974** when he was **11** years; that when he came back he found he had died and that the two brothers never had any land dispute.

23. On re-examination by Ms. Arunga, DW1 clarified that Lometet Lotim was their (plaintiffs') father; that his number was **125** while theirs (defendants) membership number was **232** and **233**; that Merii and Longokwang lived adjacent to one another while no **125** was located far away;

24. DW2, Limakori Merii also testified on the **12/3/2019** his evidence was that he lives at Kapkasan; that Merii Lotim was his father; that Julius Longorokwang is the son of his brother Longorokwang; that Merii had a land parcel at Napawoi; that he was born in that land and lived there until there were clashes and they fled due to insecurity; that they bought land in Kapkasan; that his fathers' land was left vacant; that Lometet Lotim moved from a place called Kakuma; that he was a teenager then; that he came during day time and settled on their land; that after a month, he (Lometet) went to Katikomor and lived there; that thereafter they all moved due to insecurity; that Lometet's family went and settled in Merii's land and they are still on the land; that Merii's family lives on parcels of land they bought and have not invaded the plaintiff's land.

25. On cross examination by Mr. Kaosa, DW2 stated that he was already a grown up when Lometet came to the land; that he came though their home and went to Katikomor; that insecurity moved him from Katikomor; that river Napowoi is the biggest river in the area and that it is not true that the two families are separated by a river.

26. DW3, Korkou Merii also testified on **12/3/2019**. He adopted his statement dated **16/6/2015** as evidence-in-chief; his evidence is similar to that of **DW1**.

27. DW4, Stephen Pkasa testified on **14/5/2019**. His evidence was that he lives at Kanyarkwat; that he is an area chief of Kanyarkwat ; that he knows Lometet Lotim's and Merii Lotim's families who are residents of Kanyarkwat ; that Apuo Lometet (Plaintiff) is a son to Lometet; that Julius Longokwang is the son of Merii; that Merii's family complained to him in his office saying that the Lometet family had grabbed their land; that he told them to call Lometet's family and it was we agreed that the two sides call their parents and neighbours and a meeting scheduled for **12/9/2012** at another venue; that he attended on **17/9/2012**; that neighbours were there, Lometets family were not there; that Merii's family was there; Julius spoke and explained; that he wrote down a record; that the Lometet family were there but they bunched themselves apart from the meeting; that Lometet's family used to live in Katikomor; that insecurity drove them out; that when peace came back, the children of Lometet came and settled on Merii's land and claimed it; that that was the source of this dispute; that neighbours wrote their names in the minutes; that there was a decision by the meeting that the land belonged to Merii family and the Lometet family should return to their land. He produced the minutes as **D.Exhibit 1**; he also stated that another meeting took place after the first one when a quarrel erupted and they went to the O.C.S over the fight; that another meeting was planned for **7/12/2012**; that the Lometet family never attended the meeting of **7/12/2012**; that the second meeting re-affirmed the decision of the first meeting of **12/9/2012**; he produced the minutes dated **7/12/2012** as **D. Exhibit 2**; that the Lometet family is still on the land; that Merii family lives elsewhere on some rocky land; that the Merii family has not invaded the Lometet family land but they were first on the land.

28. Upon cross examination, DW4 confirmed that he has been chief since **1990**; that he begun as Assistant Chief at Kanyarkwat; that the Sebei's from Uganda chased away people; that where one registers, that is where ones land is; that he thinks that the members were registered in **1972** or thereabouts; that he has been Chief since **1994**; that he is retired; that another former Chief and Assistant Chief also entertained the dispute over the land; that the Assistant Chief did the case; that no other Chief conducted a hearing before he did; that during the first meeting, the children of Lometet attended, but their mother did not; he confirmed that Lometet's family spoke at the meeting of **12/9/2012**; that the names of the Lometet family members at the meeting were listed in the meeting; that he does not know the respective numbers of Lometet's and Merii's land parcels; that he did not do the case based on numbers of the parcels; that his signature is the rubber stamp on the document; that Kanyarkwat has four sub-locations, but was divided into two; that he is not a member of Kanyarkwat Group Ranch; that his group ranch is Kongelai Group Ranch but he has land at Kanyarkwat ; that his land at Kanyarkwat is plot **270**; that his village is called Milimani while Lometet and Merii family are at Apuo village; that Merii family is on one side of the river Napawoi and the Lometets had built on the other side; that there is a village committee; that he does not have papers of their proceedings on this case; that he never spoke of the river, the entire land is Merii's land; that he was brought up in Kanyarkwat; that he never came from any other location; that they returned around **2007**; that during the times before the insecurity each person was living on their own land; that he did not so the case; that he only went there to ensure peace; that it was decided on **7/12/2012** that the Lometet's return to Katikomor; in reference to **P. Exhibit 6**, he confirmed that when Lomete Senior moved from insecurity, he settled on Merii's land, than insecurity also swept them away from Merii's land; that Lometet's family live on Merii's land now in Napawoi; Lometet's family went back to the land first after peace returned; that they went at the same time; that not everyone went back to the land they were entitled to; that their fathers had not quarreled at all; that the Lometet's should go to Cheptuma which is part of the group ranch.

29. On re-examination he clarified that he was chief in **1990** to **2016**.

30. That marked the close of the defence case.

31. This honourable court later issued an order in respect to an application made by the plaintiffs' advocate requiring the County Land Adjudication Officer to attend court to give evidence so as to shade light in this matter.

32. On the 15/2/2020, **Martin Odhiambo Peter**, the County Land Adjudication and Settlement Officer West Pokot gave his evidence as follows that the land in this case is in Kanyarkwat Group Ranch, West Pokot County; that the group ranch has consent to subdivide but the land has not been subdivided; that there are no parcel numbers, only membership numbers; that he got letters and summons to visit the site; that the letter is of 6/8/2019 and the court order is of 22/7/2019; that he did not visit the site because he is the only officer gazetted to do so. He sought leave to visit the site which was granted but never attended court thereafter.

ANALYSIS AND DETERMINATION

33. I have carefully considered the pleadings, the evidence, the exhibits, the submissions and case law submitted by counsels of both parties and find that the issues for determination are:

a) Whether that land currently occupied by the Plaintiff and the family of Lometet within Kanyarkwat Group Ranch belongs to Lometet whose Membership Number within Kanyarkwat Group Ranch is 125?

b) Whether an order of permanent injunction restraining the defendants, their agents and/or servants from laying any claim or interfering in any manner with land currently occupied by the plaintiff and Lometet's family within Kanyarkwat Group Ranch should issue?

c) Who bears the cost of the suit?

(a) Whether that land currently occupied by the Plaintiff and the family of Lometet within Kanyarkwat Group Ranch belongs to Lometet whose Membership Number within Kanyarkwat Group Ranch is 125?

34. From the evidence on record, it is not in dispute that the Plaintiff's father and the Defendant's father were brothers and that they were both members of Kanyarkwat Group Ranch. The Plaintiff's membership No. is 125 whereas the defendant's is No. 232. It is clear from the evidence that the plaintiff and his family are in occupation of the disputed land; which the defendants claim to be theirs. It is worth noting that the defendants are not in occupation of the land; DW1 stated as follows in evidence:

“There are no houses where we are living.”

35. Later on he stated as follows:

“We are trying to return there (to the suit land) but they (the plaintiffs) have occupied the land.”

36. Further down in his evidence he states as follows:

“We, Merii's sons returned and found Lometet's sons on the land. We queried why they never went to their land. We are not in possession.”

37. PW1 testified that the defendants' father had a separate land from theirs. In evidence, PW1 and PW2 testified that the land of the Plaintiff and that of the Defendant is separated by a river. This evidence is corroborated by the evidence of PW5 who confirmed that the land is separated by a river; that the family of the Plaintiff lives on one side of the river and the family of the Defendant lives on the other side.

38. It is common ground that Kanyarkwat Group Ranch has not yet been surveyed or demarcated. Indeed the District Land Adjudication Officer confirmed that the land has not been demarcated or surveyed. He however stated that the membership numbers are not parcel numbers but confer ownership of land to a member upon registration. He confirmed that the elders are the ones to show the member where to reside on the ground and that even if the land is unsurveyed; each member knows the extent of their land. It is therefore an appropriate conclusion to make that the plaintiff and the defendant have membership numbers and thus they are entitled to a parcel of land.

39. The brief history as narrated by the parties at the hearing is that the defendants and the plaintiffs moved away from the land at the wake of clashes way back in 1976-2001 between the Pokot community from Kenya and the Sebei community of Uganda but later returned when peace prevailed. The defendants also admit that they also fled and settled in Trans-Nzoia in 1976 when was insecurity arose. The Plaintiffs resettled first on the disputed land after the insecurity ended whereas the defendants tarried and when went back in 2007 they found the plaintiffs already resettled on the disputed land.

40. The defendants on their part also admit that there are no houses belonging to them on the suit land. The only houses therein are the plaintiff's houses.

41. I find that the suit land falls under Kanyarkwat Group Ranch; therefore the same belong to those who are members of the group ranch and registered members are entitled to occupy land within the group ranch pending demarcation. As was put by the County Land Adjudication Officer, when the survey and demarcation exercise will be carried, the occupants will be allocated land at the locations they will be occupying.

42. The suit land is not registered; therefore the provisions of the **Registered Lands Act** are not applicable in this instance. I do not agree that the issue is a boundary dispute; rather it is a dispute over the location the parties ought to be occupying. The identity of a landowner in a ranch where demarcation has not been conducted can only be established by occupation and utilization over a period of time. It is not possible to tell how long the plaintiff has been on the suit land, but it appears to be quite a long time. On the other hand, in the absence of proof that the plaintiff has other land, I find that it is possible for the Committee to allocate the defendants land in this expansive ranch. It is

clear that disturbance for the plaintiff's settlement on the land is inevitable if the defendant's claim is found to have merit. It is fortunate that the predominant thread of evidence in the suit has been the committee's work will be rendered easier by the fact that that the portions of land belonging to the two families are separated by a river.

43. It is at this point that the defendants' submission on the plaintiff's application dated **19/9/2019** comes back to haunt him. when the plaintiff applied for orders that the Land Adjudication Officer West Pokot County:

“(2) in the company of the Area Chief Kanyarkwat Location, the Assistant Area Chief Katikomor Sub-location, the Chairman Kanyarkwat Group Ranch and the Local Village Elders do visit the disputed land occupied by membership No. 125 and 232 and establish the following:-

(A) (i) Who are the occupants of land on Membership No. 125 and who are the occupants of land under Membership No. 232.

(ii) Are there homesteads on land under Membership No. 125 and if so whose homesteads are they?

(iii) Are there homesteads on land on Membership No. 232 and if so whose homesteads are they?

(iv) The exact place or village where the defendants' homesteads and those of the plaintiffs are located.

(v) Whether there is any physical feature/boundary separating the land occupied by the plaintiff from the land under the occupation of the defendants.

(B) That the Area Chief to provide security during the visit and that the Land Adjudication Officer to file a report in court within the next 30 days.”

44. The 1st defendant filed a replying affidavit on **14/10/2019** in which he opposed to application and stated *inter alia* that no survey has been carried out on Kanyarkwat Group Ranch; that Numbers **125** and **232** are not parcel numbers but membership numbers; that the Assistant Chief Peter Lowasikou is an interested party and is related to the plaintiff herein; that there are no boundaries on the parcels of land; that the time within which the site visit was to be done lapsed according to the court order that the court should proceed to write its judgment based on the material on record.

45. The County Land Adjudication and Settlement surprisingly appeared to profess ignorance of his mandate in the dispute and failed to visit the ground to ascertain the correct position on the ground. This court is left with the evidence of both the plaintiff and the defendant and that of other witnesses to be considered for determination.

46. From the evidence on record, I find that the dispute resolution mechanism on the ground ruled in favour of the defendants. It would appear that the dispute resolution mechanism identified the defendants as the owners of the suit land while no report is made of the land that should be meant for the plaintiff.

47. In this court's view it was the duty of the defendant as the elders to show the plaintiff other land which they claim was Lometet's and that it is unencumbered by any other third party's claim so that he could settle on it. Finding in favour of the defendant's allegation may render the plaintiff without land. It behoves the court to apply equity in the instance to avoid injustice to any of the parties.

48. Consequently I find that the suit land should be shared equally between Lometet's family and Merii's family. The Kanyarkwat Group Ranch Committee members in conjunction with the County Land Adjudication Officer West Pokot and the Land Adjudication Office Surveyor shall report to the site and demarcate the land occupied by the plaintiff into two equal portions having regard to the existing built up homesteads. The Merii family shall therefore be given one half of the land to settle on. Merii's family shall be at liberty to erect their dwellings and live thereon.

49. Each party shall bear their own costs of the suit.

It is so ordered.

DATED, SIGNED AND DELIVERED AT KITALE VIA ELECTRONIC MAIL ON THIS 3RD DAY OF MAY 2021.

MWANGI NJOROGE

JUDGE, ELC, KITALE