



**REPUBLIC OF KENYA**

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

**LAND CASE NO. 57 OF 2012**

PAUL KIPROTICH RUTTOH.....1<sup>ST</sup> PLAINTIFF  
MILKA SOTE.....2<sup>ND</sup> PLAINTIFF  
RACHEL CHESIRE.....3<sup>RD</sup> PLAINTIFF  
SOPHIE SOTE CHEPKWONY.....4<sup>TH</sup> PLAINTIFF  
IRENE CHESIRE.....5<sup>TH</sup> PLAINTIFF  
STELLAH TURERE SOTE.....6<sup>TH</sup> PLAINTIFF  
WINNIE KEMEL.....7<sup>TH</sup> PLAINTIFF

**VERSUS**

ABRAHIM NAIBEI CHESUMBAL.....1<sup>ST</sup> DEFENDANT  
SOLOMON BICHANGA MOFFAT NDEGE.....2<sup>ND</sup> DEFENDANT  
JOSPHAT WANGILA WANYONYI.....3<sup>RD</sup> DEFENDANT  
JOHN K. CHERUIYOT.....4<sup>TH</sup> DEFENDANT  
WILSON KORIR.....5<sup>TH</sup> DEFENDANT  
SILAS KEREMET BUKAN.....6<sup>TH</sup> DEFENDANT  
WILLIAM KIPKEMOI CHEPKWONY.....7<sup>TH</sup> DEFENDANT  
ROBINSON SAKATEKO NYASIMI.....8<sup>TH</sup> DEFENDANT  
JOHN KEMBOI CHEMAGET.....9<sup>TH</sup> DEFENDANT

**& 206 OTHERS**

**RULING**

1. During her examination-in-chief, PW2, asserted that she was testifying on behalf of the 2<sup>nd</sup>, 3<sup>rd</sup>, 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> plaintiffs.
2. Mr. Teti objected to that assertion on the basis that there was no filed letter of authority empowering PW2 who is the 4<sup>th</sup> plaintiff to testify on behalf of anyone else.
3. In this court's view unless the contrary intention is explicitly evinced at date of filing or while the suit is pending and with notice to other parties, plaintiffs enjoined to the suit are to be considered as separate plaintiffs for the purpose of that suit.

4. In the instant case, the defendants had notice that the PW2 would be testifying on behalf of the rest of her sisters; a written statement of witness PW2 filed on **23/1/2020** is on the record. That statement was served upon the defendants and they have never objected to that intention of the PW2 to testify on behalf of her sisters. Indeed when the suit proceeded to hearing on **15/11/2018**, one of her sisters was present and she testified in this case.

5. However a novel twist in the case is that the PW2 has conceded that one of the plaintiffs who also doubles up as an administrator, **Stella Turere Sote**, is senile and cannot come to court. This court is not therefore dealing with the case of plaintiffs who are all on the same footing as far as mental capacity is concerned; one of them is under a disability.

6. So whereas **Order 1 Rule 8** of the **Civil Procedure Rules** provides that where numerous persons have an interest in a suit one or more of them may commence the proceedings and, unless the court otherwise orders, continue them as representing all, the special case of the 6<sup>th</sup> plaintiff herein demands that this court do inquire into whether her interests as a person and as an administrator of the estate of the late **Samuel Cheruiyot Chesire** are being properly catered for in the suit.

7. This court is duty bound to take such consideration as any further hearing whose proceedings may be probably set aside on the basis of lack of capacity of one party would be a waste of valuable judicial time and effort.

8. Though no medical report has been availed, I note that PW2 testified under oath and I must believe she is speaking the truth when she says that **Stella Turere Sote** is senile and incapable of coming to court.

9. I have said enough. The case of the 6<sup>th</sup> plaintiff is just but an example of why this court needs the rest of the plaintiffs to testify personally unless they file any document showing they have authorized PW2 in writing to represent them and testify in the suit. It is not too late in these proceedings and that can be done. The objection raised by Mr. Teti is hereby upheld.

10. As regards the 6<sup>th</sup> plaintiff, her special case demands that her counsel will determine the appropriate step to take to ensure that owing to her status, a representative properly appointed after due court procedures is available to testify on her behalf.

11. Consequently this hearing cannot proceed any further today and must be adjourned for the reasons stated. PW2 is hereby stood down. The ball is now in Mr. Tororei's court to regularize the situation to enable further proceeding in the suit.

12. This suit will be mentioned on **14/7/2021** for further directions on which date Mr. Tororei will appraise court of progress made in getting the matter back on track.

It is so ordered.

**DATED, SIGNED AND DELIVERED AT KITALE ON THIS 23RD DAY OF JUNE, 2021.**

**MWANGI NJOROGE**

**JUDGE, ELC, KITALE.**