



**Cherubet & another (Suing on Behalf of the Estate of Elizabeth Mboga alias Elizabeth Mboga Ezron - Deceased) v Kebenei (Environmental and Land Originating Summons E001 of 2023) [2025] KEELC 3890 (KLR) (13 May 2025) (Judgment)**

Neutral citation: [2025] KEELC 3890 (KLR)

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT KAPSABET**  
**ENVIROMENTAL AND LAND ORIGINATING SUMMONS E001 OF 2023**  
**GMA ONGONDO & J ONGONDO, JJ**  
**MAY 13, 2025**  
**IN THE MATTER OF LAND PARCELS NANDI/KAPTICH /699 & NANDI/KAPTICH/701**  
**AND**  
**IN THE MATTER OF SECTION 38 OF THE LIMITATION**  
**OF ACTIONS ACT CAP 22 LAWS OF KENYA**

**BETWEEN**

**CHRISTINE CHERUBET ..... 1<sup>ST</sup> APPLICANT**

**WILLIAM KOGO BARYORI ..... 2<sup>ND</sup> APPLICANT**

**SUING ON BEHALF OF THE ESTATE OF ELIZABETH MBOGA ALIAS ELIZABETH MBOGA EZRON - DECEASED**

**AND**

**ROMANA CHEPKOECH KEBENEI ..... DEFENDANT**

**JUDGMENT**

1. By the Originating Summons dated 26<sup>th</sup> May 2023, the Applicants/plaintiffs through Tum and Associates Advocates sued the Respondents/defendant for;
  - a. A declaration that the applicants have been in open, continuous and uninterrupted possession and occupation of all those parcels of land known as Nandi/kapatich /699 measuring Zero Decimal Eight (0.8) Hectares and Nandi/kaptich /701 measuring Zero Decimal Eight (0.8) Hectares for a period in excess of Twelve (12) years.
  - b. A declaration that the Respondent's titles over the suit parcels have been extinguished by virtue of the doctrine of adverse possession.



- c. A declaration that the titles to the suit parcels are being held in trust by the Respondent for the Applicants.
  - d. The Applicants be registered as the proprietors of the suit parcels of the Respondent.
  - e. The Respondent do execute the requisite instruments of transfer of titles of the suit parcels to the Applicants and in default the Deputy Registrar of this Honourable court do execute the same.
  - f. Costs of this suit be provided for.
2. The originating summons is rooted in the supporting affidavit of nineteen paragraphs sworn by the 2<sup>nd</sup> applicant on even date. A copy of Limited Grant of Letters of Administration in respect of the estate of the deceased, Elizabeth Mboga alias Elizabeth Mboga Ezron, certified copies of the register for the two suit parcels of land and photographs thereof are annexed to the said affidavit.
  3. The respondent opposed the originating summons by way of the 32-paragraphed replying affidavit sworn on 9<sup>th</sup> October 2023.
  3. On 2<sup>nd</sup> October 2024, the court heard Tum counsel for the applicants and counsel Serem for the respondent and referred the matter to Court Annexed Mediation (CAM) upon request by the parties who are related by marriage.
  4. Consequently, the parties appeared before a Mediator, Petronila Imbayi Wegulo and arrived at the Mediation Settlement Agreement dated 6<sup>th</sup> February 2025 which reads;
 

‘That the parcel of land in Kipsisiywo Location plot No Nandi/Kamaywa 637 be subdivided as follows: -

    - (i) 1. Romana Kebenei will get 3.0 (acres) of which she will surrender 1 acre to Mr. Julius Ngetich
    2. Late Malakwen Arap Barno – 3.0 Acres.
    3. Mark Ngeny – 0.4 Acres
    - (ii) Romana Chepkoech Kebenei to transfer the parcel of Land known as Nandi Kaptich/701 and Nandi Kaptich /699 to Mr. William Kogo Bariori and Christine Cherobet.
    - (iii) That each person will bear the cost of the survey.’
  5. In the foregone, the issues for determination crystallize to whether judgment be entered in terms of Mediation Settlement Agreement herein.
  6. Ms Tum learned counsel for the applicants has urged the court to enter judgment in line with the Mediation Settlement Agreement.
  7. Mr Kiprono learned counsel for the respondent has affirmed the proposal by Counsel Tum for the applicants.
  8. So, it is common ground that the parties have settled the instant dispute through CAM as disclosed in the Mediation Settlement.
  9. The CAM settlement of the matter is in the spirit of Article 159 (2) (c ) of *the Constitution* of Kenya 2010 and the Civil Procedure (Court Annexed Mediation) Rules 2022. The court therefore, proceeds to recognize, and adopt the Mediation Settlement Agreement for implementation.



10. Wherefore, Judgment be and is hereby entered in terms of the Mediation Settlement Agreement dated February 6, 2025 as set out in paragraph 4 hereinabove.

11. It is so ordered.

**DATED AND DELIVERED AT KAPSABET THIS 13<sup>TH</sup> DAY OF MAY 2025.**

**G M A ONGONDO**

**JUDGE**

**PRESENT;**

Ms Tum learned counsel for the Applicants

Mr Kiprono learned counsel for the Respondent

Walter, Court Assistant

