



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

ELC NO. 145 OF 2015

KITALE CHEPKOROK FARM LIMITED..... PLAINTIFF

VERSUS

PETER NASASA.....1ST DEFENDANT

HASSAN NDAMWE.....2ND DEFENDANT

ANDREW GUTITILA.....3RD DEFENDANT

THE DEPUTY COUNTY COMMISSIONER

TRANS-NZOIA WEST.....4TH DEFENDANT

THE ATTORNEY GENERAL.....5TH DEFENDANT

JUDGMENT

INTRODUCTION

1. By a Plaintiff filed on dated **13/07/2015** and amended and filed on **02/10/2019**, the Plaintiff, **Kitale Chepkorok Farm Limited**, brought this suit against five Defendants. It sought the following reliefs:

(a) **A declaration that the 1st, 2nd and 3rd Defendants are not among the 126 people and to whom the land comprised in Parcel No. Saboti/Sikhendu Block 5/Chepkorok should be transferred to;**

(b) **Any other relief that this Honorable Court may deem fit to grant.**

(c) **Costs.**

2. The brief facts of the case are that the Plaintiff was duly incorporated on **14/02/1973**. Soon after it acquired land parcel **LR. No. 5777/3** measuring approximately **1351** acres or thereabouts. Later, on **23/02/1994**, it successfully applied for a consent from the area land Control Board for the land be subdivided amongst its shareholders who numbered **126**. On **14/07/2007** it surrendered the original title to the Ministry of Lands for the parcel to be converted from the **Registration of Titles Act, Chapter 281** to the **Registered Land Act, Chapter 300** both Laws of Kenya which are now repealed. The Conversion was completed by **5/08/2011** when the Chief Land Registrar authorized in writing the District Land Registrar Kitale to issue freehold titles. On **08/04/2015** it applied to the area Land Control Board for consent to issue titles to some of its members. The first three defendants objected to the consent being granted and the process was deferred. Then the Plaintiff sued them together with the fourth and fifth for the prayers sought as stated above.

THE PLAINT

3. Through the Amended Plaintiff dated **01/10/2019** and filed on **2/10/2019**, the Plaintiff contended that the Defendants are not intended beneficiaries the parcel of land it owns since they are not its members. Therefore, they had neither capacity nor any right to oppose the issuance of a consent for the subdivision of the suit land by the Board. It pleaded that it bought Land Parcel No. **LR. No. 5777/3** which was later converted to parcel No. **Saboti/Sikhendu/Block 5/Chepkorok**. It pleaded further that applied initially for the subdivision of **LR. No. 5777/3** into **126** portions for its original members who were **126** and the consent was given on **27/06/1994**. Further, it averred that on **08/04/2015** it applied to the Kiminini Land Control Board for a consent to transfer some **30** parcels to some of its **30** members but the first three defendants objected to its applications claiming that the land ought to have been subdivided to **856** portions. It pleaded further that the Defendant had no justifiable cause to do so since it that hindered the transfers to the legitimate beneficiaries to the suit land hence delaying

the process and prejudicing the shareholders.

4. In the course of the proceedings, the Plaintiff **withdrew** the **case** against the **4th** and **5th** Defendants. This was on **27/09/2021**. It was done by the consent of the parties, in accordance with the Rules of Procedure. Accordingly, the suit against last Defendants was withdrawn with no orders as to costs, leaving the one against the first three.

THE DEFENCE

5. The First, Second and Third Defendants filed a joint Statement of Defence dated **24/10/2019**. They denied the allegations presented by the Plaintiff. They pleaded that the suit was filed by fictitious persons. They further stated that the suit was *res judicata* as against the decisions in **Kitale SRM Land Case 28 of 1995; Eldoret H.C. Civil Appeal No. 36 of 1986** and **Bungoma HCCC No. 34 of 1999 (O.S.)**. The Defendants averred in **paragraph 5** of the Defence to the Amended Plaintiff that the proprietary rights of **LR. No. Saboti/Sikhendu Block 5/Chepkorok** vest in the Government of Kenya, the Plaintiff having been surrendered the original title to it hence it is not the Plaintiff's. Furthermore, to them the said parcel is home to more than **856** people who purchased it from the original owners pursuant to the consent dated **28/07/2004**. It is further contended that the parcels of land were subdivided into **856** portions. Ultimately, they prayed that the suit be dismissed.

EVIDENCE

6. On the **26/1/2021**, one **Fredrick Kipkemboi Biwott**, one of the Plaintiff's directors testified as **PW1**. He relied on as his evidence in-chief his witness statement dated **08/10/2020**. He then produced as **P. Exhibit 3** the Company's resolution for the institution of the suit. He testified that, **Kitale Chepkorok Farm Limited**, is a limited liability company duly incorporated in the Republic of Kenya. It was duly registered on **14/02/1973** and issued with a Certificate of Incorporation number **11469**, which he produced as **P. Exhibit 1**. Its mandate is outlined in both its Memorandum and Articles of Association which he produced as **P. Exhibit 2**. This includes, but is not limited to, acquiring movable and immovable property.

7. Further evidence was given by **PW1** that the Company bought and was registered the proprietor of all that parcel of land namely **LR. No. 5777/3** measuring approximately **1351** acres or thereabouts. He testified that in the course of time the Company intended to subdivide the parcel of land referred to into **126** portions and transfer them into the names of its **126** members and/or shareholders. Consequently, it lodged an application before the Saboti/Kwanza Land Control Board on **23/02/1994**. It was produced as **P. Exhibit 4**. The application to the Board sought consent for the sub-division of **L.R. No. 5777/3** into the intended portions. According to the documentary evidence adduced as **P. Exhibit 5** which was the consent dated **27/6/1994** for consent by the Saboti/Kwanza Land Control Board, the sizes of the portions ranged from **3** acres to **39**. Also, according to the same application, some of the lands were to change user to, for instance, School, Trading Centre, Dip and Dams. **PW1** testified and the documents produced show that the Land Control Board approved the request on **12/05/1994**.

8. The approval was challenged by way of litigation in **Kakamega HC. Misc. Civ. App. No. 42 of 1995**. The parties were **Joseph Chebungei Saban & Others -vs- Saboti Land Control Board**. They wanted the land subdivided into **87** portions. On **22/2/1996** the Court found the subdivision survey of the property **LR. 5777/3** proper. It directed that the exercise proceeds for survey in tandem with the Land Control Board decision. The Court order was produced as **P. Exhibit 6**. Aggrieved by the Court's finding, the party therein lodged an appeal, namely **Kisumu Civil Appeal No. 91 of 1996**. The appeal was dismissed. The Order was produced as **P.Exh7**.

9. Subsequently, on **14/07/2007** the Plaintiff surrendered the original title for **LR. 5777/3** for conversion and registration from the **Registration of Titles Act (R.T.A.), Chapter 281** Laws of Kenya (now repealed) regime to the **Registered Land Act (R.L.A.) Chapter 300** of the Laws of Kenya (now repealed) one. **PW1** produced the copy of the Surrender letter as **P.Exh8**. The title was converted and registered as **LR. No. Saboti/Sikhendu Block 5/Chepkorok**. As a result, on **05/08/2011** the Chief Land Registrar confirmed in writing, by a letter dated the same date and produced as **P. Exhibit 9**, the successfulness of the conversion and directed the District Land Registrar, Trans Nzoia to issue freehold titles in the name of the Plaintiff. **PW1** produced the letter stated above forwarding also a **Registry Index Map (R.I.M.)** and Area List of **34** members as **P. Exhibit 10**. The list contained Thirty-Four (**34**) portions out of the **126** were forwarded to the District Land Registrar for further action. Thirty-Four (**34**) Green Cards were opened and the Plaintiff registered as the proprietor of the respective parcels. Kenya Shillings **1500/=** was paid for each parcel. The Plaintiff produced ten (**10**) copies of certificates of official search results and receipts respectively as **P. Exhibit 11** to show the registered proprietor. The number of parcels tallies with the blocks listed in the partial area list.

10. In furtherance of the plan of apportioning the **34 blocks** to the members, the Plaintiff lodged another application for consent before the Kiminini Land Control Board. The Board was held on **08/04/2015**. He produced Minutes of the said Board Meeting which shows that all the applications were deferred.

11. According to **PW1**, during the sitting of the Board the first three Defendants, namely, **Peter Nasasa, Hassan Ndamwe & Andrew Gutitila** objected to the applications. They wanted the land subdivided into **856** portions instead of **126**. Because of the objections the Board deferred the Plaintiff's applications. Against this background the Plaintiff instituted the proceedings against the three Defendants.

12. The Plaintiff prayed that this Court finds the **1st, 2nd and 3rd Defendants** to have, without any color of right, opposed the application at the Land Control Board. It was further its prayer that the consent pending be issued and that an award for costs be made in its favor. With this, the plaintiff closed its case without calling any further witness.

THE DEFENDANT'S EVIDENCE

13. This matter having proceeded before another judge who had since gone on transfer, the Court gave directions, on **27/09/2021**, that it proceeds from where it had reached. Thus, the matter proceeded for defence hearing the same date. **DW1**, the **1st Defendant**, started by adopting his witness statement dated **08/02/2021** as evidence in- chief. He testified that he resided on the subject parcel of land. His further

oral evidence was that the Plaintiff was no longer in existence. He did not produce any document from the Registrar of Companies to support his evidence. His evidence was that one member of the Plaintiff sold his land to nine (9) people and went to live in Eldoret. In his written statement he stated that he was aware that the Plaintiff Company does not exist anymore and that the original members surrendered to the government the title to the suit land, namely **LR. No. 5777/3**. His statement reads that upon that, they sold their shares to **856** people who have been in peaceful occupation thereof. He then stated that even as at the time of making the statement, subsequent buyers have been selling either their full or part shares to other new buyers whose total now is **1741** people. He then stated that the Company ceased to exist and only three people, namely, **Felix Kemboi Biwott, Livingstone Kang'ahi** and **Andrew Kotochai**, are "hanging on that name".

14. He reiterated in cross-examination that all shares of the land were sold to about **856** persons. To him therefore, no proprietary rights vest in the Plaintiff. He stated that he was amongst the purchasers having acquired his parcel from one **Zakayo Chemuku**. It was his evidence that the land is in continuous subdivision to date. He stated that there is in place a government titling program intended to issue genuine titles. According to him, so far **1741** members are set to benefit from it. He urged this court to dismiss the suit to pave way for the government titling project. He further stated that he was an original member of the Plaintiff Company. He stated further in cross-examination that it was true a consent was given to subdivide the land into **126** portions. He stated that the land in dispute belongs to the Plaintiff. He confirmed that subdivisions were obtained for the benefit of the members. But it was his position that there were two subdivision processes, one for **126** portions and another for **856**. He further admitted that he was not aware of the existence of the facts alluded to in the Plaintiff's exhibits marked **P. Exhibit 9, 10** and **11**. In conclusion he denied having participated in the meeting of **08/04/2015**.

15. DW2, the 2nd Defendant, testified on the same date. His evidence was that he resided on the subject parcel of land. He adopted his statement dated **08/02/2021** as his evidence in-chief. His witness statement was very sketchy. It only referred to the agreement between him and the seller of the parcel of land he bought, one Festo Ngeywa. It also stated that "*the original promoters including Felix Kemboi Biwott had surrendered the original title to the government.*" He then stated further that history had moved on, they cannot go back to the original promoters many of who had passed on and that even those who are alive they do not reside on the land. He gave oral evidence that he purchased his portion from **Festo Ngeywa (Deceased)** who was an original member of the Plaintiff. His testimony was that the original members surrendered the title to the government and subdivision took place for more than **850** plots. He thus concluded that the suit lacked merit as the property had undergone several subdivisions. Consequently, he prayed for the dismissal of the suit. On being cross-examined by learned counsel, he said he had no knowledge of the contents of **P. Exhibits 9, 10** and **12**. He stated further that there was a consent initially granted defeating the consent sought on **08/04/2015**. He denied having attended the meeting that disrupted the Kiminini Land Control Board. He, however, demonstrated that he was aware that the consent was deferred because of objections raised. It was his evidence that some of the people who advocated for the **856** plots were among the **126** original members.

16. The **3rd Defendant** did not testify. Counsel indicated that his evidence was substantially similar to that of the 1st and 2nd Defendants. After that they closed the defence case. In support of their case, the Defendants produced a number of documents as exhibits. I have carefully studied the documents as against the witness statements adopted and the two Defendants' oral evidence. **DW1** produced a copy of the Ruling in Kitale **SRM Land Case No. 28 of 1985** as **D. Exhibit 1**. He also produced a copy of the Judgment in **Eldoret HCCA No. 36 of 1986** as **D. Exhibit 2**, a copy of the Ruling in **Bungoma HCCC No. 34 of 1999** as **D. Exhibit 3**, the List of shareholders and their buyers as **D. Exhibit 4**, the Letter of consent from the Kiminini Land Control Board dated **28/07/2004** approving subdivision of 856 plots, as **D. Exhibit 5**, the Letter dated **13/03/2009** from the District Surveyor Trans Nzoia to the Director of Surveys requesting for clarity as the subject parcel of land bore two sets of records on subdivision into either **126 plots** or **856 plots** as **D. Exhibit 6**, the Letter dated **24/06/2009** from the Director of Survey to the Chief Land Registrar as **D. Exhibit 7**, the Letter dated **31/10/2011** forwarding copies of amended Registry Index Map with area list of **856 plots** as **D. Exhibit 8** and **9**, the Letter dated **15/10/2012** recommending approval of subdivision into 856 portions from the District Surveyor to the District Lands Officer as **D. Exhibit 10**, the Letter dated **17/10/2012** approving the subdivision scheme to **856 plots** from the District Physical Planner to the District Lands Officer as **D. Exhibit 11**, the Letter dated **18/10/2012** recommending approval of the subdivision by the Principal Land Administration to the Commissioner of Lands as **D. Exhibit 12**, the Surrender letter as **D. Exhibit 13**, the Registration of surrender of title on **27/07/2011** as **D. Exhibit 14**, the Letter dated **06/06/2013** approval of subdivision scheme by the chairman National Land Commission to the Plaintiff as **D. Exhibit 15**, the Letter dated **08/05/2013** requesting farm occupiers of Trans Nzoia to allow surveyors to enter farms and survey the properties in line with the government of the day's promise to issue **3 million** titles within **5 years** from **2013** - **D. Exhibit 16**, and a Summary list of members in the subject property as **D. Exhibit 17**.

SUBMISSIONS

17. After close of the parties' cases, they elected to file written submissions. As at the time of writing this judgment, there was only the Plaintiff's on the record. They were in a set of two – initial and supplementary ones dated **18/02/2021** and **15/10/2021** respectively. In them Plaintiff summarized the facts and evidence. It submitted that **Section 8 (2)** of the **Land Control Act** provides avenues for appeal where one is dissatisfied with the decision of the Land Control Board. It stated that the subdivision of the land to **856** plots was not substantiated. To it, the **34** parcels of land in its name are held in trust for its **34** members and that such rights are protected under **Section 25 (1)** of the **Land Registration Act**. The Plaintiff submitted that since it remains the rightful legal proprietor, no one else can claim interest in the subject property. It pointed out that the Defendants raised no counterclaim thereby vitiating their allegations. The Plaintiff asked this court to allow it to continue with the process of transfer of the suit land without any interference. It fortified further their submission by stating that its rights are protected under the Constitution. It submitted further that the issue in dispute is not whether the land ought to be subdivided into **856** portions as that was determined in favor of the **126** portions. Finally, the Plaintiff submitted that issue of *res judicata* was determined by this court. It is therefore a non-issue.

ISSUES

18. I have carefully considered the pleadings herein, the evidence and the submissions as well as the authorities and statutes cited. I arrive at the conclusion that the only two issues for determination are:

(a) *Whether the Plaintiff is in existence or not.*

(b) *Who between the plaintiff and the defendants should the land in question be transferred to*

DETERMINATION

(a) Whether the Plaintiff is in existence or not.

19. Regarding the issue as to the existence or otherwise of the Plaintiff, **PW1** produced in evidence a copy of the Certificate of Incorporation of the Plaintiff showing the Plaintiff on **14/02/1973**. He testified that it is still in existence. DW1 and DW2 stated in evidence that the Plaintiff was not in existence. They did not produce any evidence from the Companies Registrar to show this fact. They only relied on their oral testimony that since many of the original members or shareholders has died, the company was no longer in existence. Nothing can be far from the truth. A Company once incorporated is a separate entity from its members. The members come and go, and they can even die. But unless the company is wound up, it continues to exist irrespective of the non-existence of its shareholders. I am guided by the seminal case of ***Salomon v A Salomon & Co Ltd [1896] UKHL 1, [1897] AC 22***. Thus, the Plaintiff is in existence and therefore able to transact business relating to the suit land until it hands it over to the rightful beneficiaries.

(b) Who between the Plaintiff and the Defendants should the land in question be transferred to?

20. The Plaintiff seeks this court's declaration that the **1st, 2nd and 3rd Defendants** are not direct beneficiaries of the subdivision of the subject parcel of land. It then sought that the Defendants be barred from disputing any mode of subdivision commenced and or instituted by the Plaintiff.

21. Further, it is the Plaintiff's belief that the three Defendants stalled the subdivision process in **2015**. Evidence was led by the Plaintiff through **PW1** that the Defendants raised objections to the issuance of the consent to subdivide that land as intended by the Plaintiff. That caused the process to be put in abeyance. The Plaintiff relied on the Minutes of the Kiminini Land Control Board which halted the issuance of the consent to subdivide the land further.

22. **Section 107 (1) Evidence Act** provides as follows:

“Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist...”

23. It is no doubt, from the provision of law cited above, that the one who bears the burden of proof is he who alleges a fact. The only exception to the evidentiary burden being born by the one who asserts a fact is where the law expressly shifts that burden to the other party. In this case, the Plaintiff is the one seeking to prove to the Court that the land comprising of No. **Saboti/Sikhendu/Block 5/Chepkorok** should be transferred it. The onus is on it to do so.

24. I have considered the pleadings, the evidence on record and the law. I find that the Plaintiff proved that it is an existing company. It also gave evidence, which was not disputed by the Defendants, that its' original members were **126**. It proved that it was the original proprietor of land parcel number **LR. No. 5777/3**. There was clear evidence by the Plaintiff that it applied to the Saboti/Kwanza Land Control Board for a consent to subdivide the land into **126** portions which were to be registered in the names of its 126 members and the consent was given on **27/6/1994**. Both the Plaintiff and the Defendants agreed in evidence that after the issuance of that consent, some members challenged it in the **Kakamega High Court Misc. Civ. App. No. 42 of 1995** and they lost. They appealed to the Court of Appeal sitting in **Kisumu Civ. Appeal No. 91 of 1996** which they also lost. The Plaintiff also proved, and this evidence was not controverted by the Defence evidence, that on **14/07/2007**, it surrendered the title to the entire parcel of land to the government in order for it to issued titles to the **126** members. It was common evidence by the parties that the parcel of land was converted from the repealed Registration of Titles Act to the repealed Registered Land Act regime. It was also common evidence after the conversion, the parcel was given a new title number **Saboti/Sikhendu/Block 5/Chepkorok**. The Defendants contended in evidence that upon the surrender of the title by the Plaintiff for conversion, the land reverted to the government hence it is the government that it supposed to issue titles to the many new buyers who including the initial **856** many of whom bought parcels of land from the original **126**.

25. While an excerpt of the minutes of the meeting demonstrates that indeed the subdivision requests were deferred, there is no iota of evidence evincing that there were objectors to the application. A list of attendees or any written objections presented before this Court would have sufficed. I am therefore not convinced that the Defendants were the objectors behind the deferment.

26. That notwithstanding, I note that the Defendants averred that the land parcel namely **L.R. No. Saboti/Sikhendu Block 5/Chepkorok** is to be subdivided into **856** portions. For this proposition the Defendants produced letters dated **15/10/2012** from the District Surveyor to the District Lands Officer recommending approval of subdivision into **856** portions and one dated **17/10/2012** approving the subdivision scheme to **856** plots from the District Physical Planner to the District Lands Officer and one dated **18/10/2012** recommending approval of the subdivision by the Principal Land Administration to the Commissioner of Lands. They further presented a consent dated **28/07/2004** from the Kiminini Land Control Board. Their position is that this was a subsequent subdivision of the suit land.

27. I note that this alleged second subdivision came after the approval of the subdivision into **126** plots. The consent that gave rise to **126** subdivisions is the valid consent over the suit land. It was granted on **27/6/1994**. That is a settled issue now. And as facts are, it was granted to the proprietor of the parcel of land to carry out the subdivisions. The proprietor was the Plaintiff and no other. The argument by the Defendants that the since the original title was surrendered to the government for conversion it belongs to the government is incorrect. The surrender was for conversion from one land regime to another but the ownership remained with the owner. The process the Defendants allude to in their evidence is compulsory acquisition. That was not what was done in this matter. Actually, that is why the titles that came out after the subdivision were in the name of the Plaintiff, and the Plaintiff has testified that it holds them in trust of its members.

28. It is not clear how the subdivision of **856** plots could be made while there was a valid consent from the Land Controls Board to subdivide the same subject parcel of land into **126** plots. The law on subdivision of agricultural land and transfer thereof to any new owners is clear. Both the owner and intended transferee must apply jointly within the prescribed time to the relevant Land Control Board for and be given

consents for subdivision and transfer. The Board can be an ordinary or special one. Anything short of the application process being done properly is a nullity.

29. I find the documents relied on by the Defendants about the existence of the division of the suit land to **856** portions incorrect and invalid. I therefore find that the purported consent subdividing the **856** plots subsequent to the **126** plots subdivision improper. I am guided and associate myself with the sentiments of **Onyancha J in the case of Alberta Mae Gacie V Attorney General & 4 Others [2006] eKLR who stated as follows:**

“Cursed should be the day when any crook in the streets of Nairobi or any town in this jurisdiction, using forgery, deceit or any kind of fraud, would acquire a legal and valid title deceitfully snatched from a legal registered innocent proprietor. Indeed, cursed would be the day when such a crook would have the legal capability or competence to pass to a third party, innocent or otherwise, a land interest that he does not have even if it were for valuable consideration. For my part, I would want to think that such a time when this court would be called upon to defend such crooks, has not come and shall never come....”

30. In the instant case, if any part of the land comprising of **L.R. No. Saboti/Sikhendu Block 5/Chepkorok** should be transferred to any other individual or subdivided to anyone, it can be done only by the proprietor. It is that proprietor who should have sought consent to transfer. It matters not how many buyers exist. The owner must be involved in the process. I have found that the proprietor of the suit land is the Plaintiff.

31. In case there are buyers, they should wait patiently for the owner, the Plaintiff to transfer the land to the original **126** members who shall then transfer to the subsequent buyers in succession depending on who bought what share from whom. Objection, by any persons other than the original members, to the grant of consents sought by the Plaintiff to transfer the respective portions of the **126** original members to them will serve no purpose than delaying the process of issuance of titles ultimately to all buyers. It would be advisable that the Company is given chance to obtain those consents from the relevant Board.

32. Whereas the Defendants testified that they did not participate in the objection proceedings that led to the deferment of the Land Control Board of **8/04/2015** they adduced evidence that their position is that the land should have been subdivided to **856** portions. The Plaintiff produced **P. Exhibit 12** to show that the Applications it made on the material date were deferred. There were no other records to show who attended the Board and why the deferral was made. The Plaintiff adduced further evidence that the persons who caused the issuance of the consent on the material date intended that the land be subdivided into **856** portions and not **126**. This evidence marries well with that of the Defendants that there has been tension and a dispute over the number of parcels that should emanate from the intended subdivision of the suit land. Therefore, it is clear to me that, although the Plaintiff did not produce a document to show specifically that the Defendants were the ones who objected during the Board of **8/04/2015**, since the Defendant still hold onto the about subdividing suit land into **856** portions, I am convinced on a balance of probabilities that they and or their agents must have been participants in that process.

33. In light of the above, I find that the Plaintiff’s continued subdivision process should not be defeated by virtue of the Defendants’ actions. In their statements and further documents and in particular, **D. Exhibit 4** the Defendants demonstrate that they are not the original members of the Plaintiff. In substance, they do not reap the direct benefits as accrue to the original **126** members of the Plaintiff. They have demonstrated that they all were purchasers from the original **126** members. They did not give evidence to demonstrate

34. To my mind therefore, they cannot benefit from that lawful subdivision into **126** plots. It is in fact to the Defendants’ best interest in having the subdivision proceed to its logical conclusion. In any event as I have said above, once the buyers of or part of the parcels of land to be transferred to the original **126** members proof that they rightly acquired parcels from them, the original **126** members will transfer the respective portions to the buyers, and the buyer to other buyers if that has been the process to date. I therefore proceed to make the following orders:

(1) A declaration be and is hereby made that the 1st, 2nd and 3rd Defendants are not among the 126 people and to whom the land compromised in parcel no. L.R. No. Saboti/Sikhendu Block 5/Chepkorok should be transferred to.

(2) The Plaintiff is awarded costs of the suit as against the 1st, 2nd and 3rd Defendants together with interest thereon.

DATED, SIGNED AND DELIVERED AT KITALE VIA ELECTRONIC MAIL ON THIS 10TH DAY OF DECEMBER, 2021.

HON. DR. IUR FRED NYAGAKA

JUDGE, ELC, KITALE.