

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT KITALE**  
**ELC NO. E005 OF 2025**

**SAMUEL KIBET**

**CHUMO-----PLAINTIFF**  
*(Suing as the Administrators of the Estate of the late  
CHERUIYOT ARAP CHEMOIGUT (Deceased))*

**VERSUS**

**ABRAHAM ASMAN SIRNG'EWO**

*(Sued as the Administrator of the Estate of  
KIMUTAI ARAP MUREI  
(Deceased))-----DEFENDANT*

**JUDGMENT**

- 1.** What is before the court is a plaint dated **18/2/2025**.  
The plaintiff, pursuant to a grant of letters of administration of the estate of Cheruiyot Arap Chemoigut, seeks:
  - (a) Declaratory orders that the plaintiff is entitled to 5.8 acres in Plot No. 79, Karara Bororiet Settlement Scheme, the defendant to 4.8 acres, and 0.4 acres reserved for public utility, and for an order that the said land be demarcated through survey forthwith.**
  - (b) A permanent injunction restraining the defendant, his family members, agents, and/or servants, or any other person who may claim interest or act through the**

**defendant, from interfering in whatever manner or style with the plaintiff's 5.8 acres in plot No.79, Karara Bororiet Settlement Scheme, otherwise known as Karara Bororiet Farm.**

2. The plaintiff relies on **P. Exhibit No. (1)-(12)**. His testimony and the case are supported by the evidence of PW2 and PW3. PW4 confirmed that the request to subdivide the land into three portions among the plaintiff and the defendant, as well as **0.4 acres** on account of public utilities, has been hampered by the defendant.
3. The defendant has not opposed the suit despite service with summons to enter appearance, through affidavit of service dated **7/3/2025**, sworn by George Mumali on **7/3/2025**, or attended court to justify why the Land Adjudication and Settlement Office cannot visit the locus in quo and effect the subdivision on the ground so that the plaintiff can access his rights under **Article 40** of the Constitution as read together with **Order 40** of the Civil Procedure Rules and **Section 63** of the Civil Procedure Act.
4. The role of a Land Adjudication and Settlement Officer in land subdivision and survey in settlement schemes includes identification of rights, resolution of disputes, and facilitation of the demarcation of the plots under

the Land Adjudication Act Cap **284**, and the Land Act **2012**.

5. In **Joseph Kiemechwa vs County Land Adjudication and Settlement Officer & Others [2025] KEELC 1042 [KLR]**, the court cited **Bandi vs Dzomo & Others [2022] KECA 584 [KLR] (24<sup>th</sup> June 2022) (Judgment)**, on the operative law in a settlement scheme in general and in particular on the manner of identifying the beneficiaries.
6. PW4 testified that there is no dispute as to who the beneficiaries of the **5.8** and **4.8 acres** are on the ground.
7. The plaintiff has tendered evidence on the efforts made through letters for the defendant to give room for him to enjoy the ownership rights. The right to own land includes enjoyment of the same. The defendant has not refuted the said ownership rights since **1974**, when the land was acquired by the plaintiff.
8. Breach of ownership rights attracts the intervention of this court by way of a permanent injunction under **Order 40** of the Civil Procedure Rules. a permanent injunction is a final order that prevents a party from doing something as a conclusive relief after a hearing of the witnesses. There is undisputed evidence that

the plaintiff has been deprived of his ownership rights since land holds intrinsic value in Kenya; loss of its use for no justification constitutes irreparable harm or damage. Refusing a permanent injunction in the circumstances, this case will fly against the clear provisions of the law to safeguard the plaintiff's proprietary rights.

- 9.** Frustrating the plaintiff's rights by denying the statutory body freedom, subdividing and surveying the land among the beneficiaries cannot be tolerated by this court. It calls for the order prayed for, for permanent injunction and declaratory orders.
- 10.** The court has looked at the exhibits by the plaintiff. The evidence supports the plaintiff's rights as the owner of **5.8 acres** out of the subject land. In **Kenya Power & Lighting Co. Ltd vs Sheriff Molana Habib [2018] eKLR**, the court held that a permanent injunction is granted on the merits of the case after the evidence in support of or against the claim has been tendered. A permanent injunction finally determines the rights of the parties before the court.
- 11.** The evidence by the plaintiff has not been shaken by the defendant. the court hereby declares that the plaintiff is entitled to have the share of **5.8 acres** subdivided from that of the defendant, so that he can

continue to use, access, enjoy, and develop the land unperturbed.

**12.** The District Land Adjudication and Settlement Officer in charge is directed under the security of the OCS of the area, to effect the survey and subdivision within **30 days** from the date hereof. **Prayer No. (a)** and **(b)** are granted. Costs of the suit, subdivision, and the site visit to be met by the defendant.

**13.** Orders accordingly.

**Judgment dated, signed, and delivered** via **Microsoft Teams/Open Court** at **Kitale** on this **16<sup>th</sup>** day of **December 2025**.

**In the presence of:**

Court Assistant - Dennis

Lichuma for the plaintiff present

Defendant absent



**HON. C.K. NZILI  
JUDGE, ELC KITALE.**