

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KITALE
ELC NO. 68 OF 2020

ESTATE OF KAPELINGOROK ARIANGATOM
represented by

SAMUEL P. KAPELINGOROK-----1ST
PLAINTIFF

CHRISTOPHER M. ARIANGATOM-----2ND
PLAINTIFF

VERSUS

CHEPAYOS KEMERINYANG-----1ST
DEFENDANT

CHEPKOPEGH GROUP RANCH-----2ND
DEFENDANT

JUDGMENT

1. Vide the Complaint dated 4/11/2020, the Plaintiff seeks the following orders;

a) A declaration be made that the late Kapelingorok Ariangatom and now his estate is the sole owner of the land now occupied by the estate, part of the land owned by Chepkopegh Group Ranch and to the exclusion of the 1st defendant.

b) A declaration be made that the 1st defendant and who is not the administrator of the estate of the late Kemerinyang Ariangatom, had no legal capacity to institute a land claim on behalf of the estate of her deceased husband.

c) A declaration be made that as between the two decisions made by the 2nd defendant on the 25/5/2018 over the same disputes, the genuine one is the one stating that the disputed land

do belong to the estate of Kapelingorok Ariangatom.

- d) A declaration be made that the South Pokot South Council of elders had no jurisdiction to hear the dispute between the parties hereto and their decision is null and void.**
- e) An order be made preserving the status quo and whereby the disputed land do remain in the occupation of the estate of Kapelingorok Ariangatom and further that no subdivision be undertaken, while pending the hearing and determination of the suit**
- f) A permanent injunction.**
- g) Costs**
- h) Interest**
- i) Any other or further order that this Honourable Court may deem fit to grant.**

2. The Plaintiff pleaded that the 2nd defendant (CHEPKOPEGH GROUP RANCH) is a body corporate under the Group Representatives Act, (now repealed) and it owns a big tract of land in Kipkomo Sub-county on behalf of its members. That the same is registered as West Pokot/Chepkopegh/1. By the time the Community Land Act 2016 came into force, the 2nd defendant had already applied for dissolution of the Group Ranch in order to issue individual titles to its members, and under the Community Land Regulations 2017, the 2nd defendant was allowed time to finalise the process of sub-division and issuance of titles to individual members, and the process is ongoing.

- 3.** Vide Kapenguria PMC Probate and Administration Cause No.46 of 2020, both Samuel P. Kapelingorok and Christopher K. Ariangatom were issued with an ad litem grant, for the purpose of filing a suit on behalf of the estate of the late Kapelingorok Ariangatom and who died on the 10/12/1995. During or about 1968 demarcated his land located at Kapkitony Village Senetwo Location of West Pokot. The extent of the land was shown by a land committee. It was during 1974 that the deceased moved into the land and established his home. The Plaintiff pleaded that the late Kapelingorok Ariangatom joined Chepkopegh Group Ranch as a member number 9. That in 1979, he welcomed his mother namely Cheporopkony Ariangatom and in 1981 he requested his brother Kemerinyang Ariangatom to allow him temporarily settle in his land at Kapkitony with his wife namely Chepayos Kemerinyang even as he looked for his own land and the request was granted.
- 4.** The plaintiff pleaded that Kemerinyang Ariangatom and his wife remained in the land of the deceased until 1990 when he moved into Kaptakeu Village. During 1991 the

family of Kemerinyang Ariangatom (wife and children) vacated the land of Kapelingorok and joined Kemerinyang Ariangatom at Kaptaren Village and where he had now bought land. During the year 2002 Cheporopkony joined Kemerinyang Ariangatom at Kaptaren Village and she died in the year 2002 and got buried there, Kemerinyang Ariangatom died in 2013 and got buried in his land. Kemerinyang Ariangatom also became a member No. 40 of Chepkopegh Group Ranch. During the lifetime, he never claimed any land from his brother Kapelingorok Ariangatom or even from his estate, for indeed he had no claim whatsoever since the land at Kapkitony Village solely belonged to Kapelingorok Ariangatom. In the year 2018, Chepayos Kemerinyang and who is not the administrator of the estate of the late Kemerinyang Ariangatom lodged a claim with Chepkopegh Group Ranch, against the family of the late Kapelingorok Ariangatom, alleging that her husband's family was entitled to a share in the land that had been owned by Kapelingorok Ariangatom, at Kapkitony Village.

5. He urged that the 1st defendant was not the administrator of the estate of her late husband and Samuel Kapelingorok was by then not the administrator of the estate of Kapelingorok Ariangatom and therefore, the claim of the 1st defendant was incompetent in law. The seven (7) officials/committee members of the 2nd defendant heard the 1st defendants claim on the 25/5/2018 and the ruling was that the land belonged to the late Kapelingorok Ariangatom and that the family of the Kemerinyang Ariangatom had no claim in that land. The 1st defendant being dissatisfied with the decision appealed to the South Pokot District Council of Elders and who had no jurisdiction to handle the matter.
6. It is the plaintiff's case that since the council of elders had no jurisdiction to hear the claim, its decision should be declared as null and void. Further, that the proceedings and decisions availed on 05/08/2020 were a forgery. The plaintiffs appealed to the Land Adjudication Officer West Pokot and confronted him with the two sets of contradicting proceedings and decisions of 25/5/2018, but vide a letter of 16/9/2020 he stated that they could not

delete the name of the late Kemerinyang Ariangatom from the register and further intimated that the implementation would be perfected on 18/9/2020. But the office of the Chief, Senetwo Location, in the interest of peace ordered the maintenance of the status quo while awaiting a court decision. Consent to file the dispute in court was granted by the land Adjudication and settlement officer West Pokot on the 13/10/2020.

7. The plaintiff pleaded that unless the court suspends the implementation of the decision ordering the subdivision of the suit land equally between the plaintiff and the 1st defendant, the titling process is likely to be proceeded with and the suit may be rendered nugatory.

Defendants Defence and Counterclaim

8. The defendants filed a defence and counterclaim in response to the Plaint. They denied the allegations therein and urged that in reply to the contents of paragraph 6 of the Plaint, when demarcation began, the Plaintiffs father demarcated his share and the 1st Defendant's husband demarcated his portion out of the family land and each became members of the Group Ranch being Member No.9

and No.40 respectively. In response to paragraph 7 of the Plaintiff the 1st defendant stated that upon demarcation of the land by the committee they took occupation, established their matrimonial home and sired children on the land with the knowledge of their father.

9. In further response, he averred that a dispute arose between the two brothers and as a result, the late Kapelingorok Ariangatom became violent towards his younger brother. Fearing for his life, the late Kemerinyang Ariangatom moved out of the portion of land and purchased another one leaving behind his family inheritance. She averred that their portion of land is clearly distinct from the Plaintiffs' and their section is being used for grazing and each one of them have respected the boundaries save for the Plaintiffs who recently attempted to occupy the 1st Defendant's portion by trying to fence the same.

10. In further reply to the contents of paragraph 15, 16 and 17 of the Plaintiff, the 2nd Defendant stated that under the Group Representative Act they are mandated to handle disputes amongst its members. That the dispute was

referred to them by the Plaintiffs and 1st Defendant and on the 25/05/2018, the dispute was heard and determined. The verdict was that both brothers being the Plaintiffs father and the 1st Defendant share the land equally. They denied that there was a decision issued by themselves awarding the entire parcel of land to the Plaintiffs herein. Further, that the Plaintiffs ruling and or decision of 25/05/2018 is a pure forgery.

11. The defendants stated that the Plaintiffs having refused to apportion the 1st Defendant her husband's share, she was forced to seek further assistance from the South Pokot Council of elders and on the 25/2/2020, the said elders endorsed the decision made by the Executive Land Committee from Chepkopegh Group Ranch. Therefore, the allegations that the decision dated 25/2/2020 was an appeal is false.

12. The Defendants stated that upon a decision of the Executive Land Committee is passed, the copy is forwarded to the Land Adjudication Officer for implementation and delisting of members of the Group Ranch can only be done at the Annual General meeting of

the Group Ranch. They averred that the area Chief has connived with the Plaintiff who is an Assistant Chief to deprive her ownership of the land belonging to her late husband.

Counterclaim

13. Vide their Counterclaim, the defendants seek the following orders against the Plaintiff;

a) A declaration that 1st Defendant is a beneficiary of land parcel situated within Chepkopegh Group Ranch by virtue of the Estate of deceased Kemerinyang Ariangatom member No.40.

b) A declaration that the decision of the 2nd Defendant issued stating that land parcel situated within Chepkopegh Group Ranch be shared between the Plaintiffs and 1st Defendant as valid and genuine.

c) Costs.

d) Interest.

14. In the counterclaim, the 1st defendant avers that she is a beneficiary of land parcel situated within Chepkopegh Group Ranch by virtue of membership No.40 of one Kemerinyang Ariangatom-Deceased her late husband herein. That on the 25/05/2018, the Executive Committee of the Group Ranch heard and determined the dispute over the land parcel where it was held that the disputed parcel is to be shared among the Plaintiff and the 1st

Defendant herein. She urged that her claim against the Plaintiffs is for a declaration that she is a beneficiary of land parcel situated within Chepkopegh Group Ranch by virtue of the Estate of deceased Kemerinyang Ariangatom member No.40. She further prayed for a declaration that the decision of the 2nd defendant is valid and genuine.

15. The matter proceeded for full hearing. Evidence was led as captured below.

16. PW1 was **Atodonyang Lokoriongar**. She adopted her witness statement dated 07/5/2021 as evidence in chief. She testified that she was part of a six-member group ranch committee and which was mandated to officially allocate land to persons who had demarcated land and occupied the same. She urged that she knew the late Kapelingorok Ariangatom who had a younger brother namely Kemerinyang Ariangatom and who died in 2013. That in 1968, Kapelingorok Ariangatom demarcated his own land at Kapkitony village and the committee allocated the land to him, and she was present when the committee went to the land in 1968 and marked the extent of the said land. After the allocation, the committee members

went to the home of Kapelingorok Ariangatom and took brew which he had prepared. Neither the mother nor brother of Kapelingorok Ariangatom were present when the allocation was done. The mother and the younger brother namely Kemerinyang Ariangatom never moved to the Kapkitony land with Kapelingorok Ariangatom in 1974. But in 1979, the late Kapelingorok Ariangatom welcomed his mother into his land. She came from Tapoden village and where she also lived with her family. In 1981 Kemerinyang Ariangatom and his wife with the permission of Kapelingorok Ariangatom moved into the Kapkitony land of Kapelingorok Ariangatom. They remained therein until 1990 and when Kemerinyang Ariangatom moved out of his brother's land in 1991 and joined Kemerinyang Ariangatom. They never returned to the land of Kapelingorok Ariangatom and were buried in the land of Kemerinyang Ariangatom. While in the land of Kapelingorok, the mother and the two son's families lived in the same compound.

- 17.** She testified that at no time during the lifetime of Kapelingorok Ariangatom, did either Kemerinyang or his

wife lodge any claim on the land of Kapelingorok Ariangatom. Meanwhile, Losiamu Ariangatom had also demarcated his own land at Parkaswa Village and the six-man committee allocated the land to him. Her own sister namely Cheponyorio Meriakeren had also demarcated her own land and the six-member committee allocated the land to her. Her land was separated from that of Kapelingorok Ariangatom by a river known as Chelaketetwa. By 1995, when Kapelingorok died she was still in the neighbourhood and relocated in 1997 when she moved to Talau village.

- 18.** During cross examination, she stated that the parcel of land which is in dispute is land situate in Chepkopegh Group Ranch and that she is a member of the Ranch and owns a parcel of land there. The members of the Ranch registered themselves but she did not know which year that was. The members who registered were those who had land in it and it is true Kapelingorok Ariangatom had parcel of land there. The brother to him and Kemerinyang Ariangatom also registered and has a parcel. She further stated that he is the husband to Chepayos Kemerinyang.

19. She stated that she was not there in 2018 when the Executive of Committee of the Ranch handled a dispute over the land. That when there is a dispute on land in the Ranch it is the committee which solves it. It is true the committee knows the owners of the parcels of land. Further that Chepanyos and the mother in-law and her husband lived on that land for a short while and moved away. When the committee allocated the land it was given to Kapelingorok Ariangatom. When Kemerinyang moved to his own land he moved with his mother Mary and the wife Chepanyos. When she moved to Talam the three did not come back to the land for the deceased plaintiff. It was only some years later that the sons of Kemerinyang started claiming that the land of Kapelingorok was theirs.

20. PW2 was **Samwel P. Kapelingorok**. He adopted his witness statement dated 4/11/2020 as evidence in chief and his further witness statement dated 8/5/2021 as well. Additionally, he produced a Limited Grant of Letter dated 1/9/2020 as P-Exhibit 1, a certificate of Chepkopegh Group Ranch dated 3/7/2002 as P-Exhibit 2, a letter written by the County and Adjudication Settlement Officer, West

Pokot dated 6/4/1996 to show that the 2nd Defendant is registered as owner as P-Exhibit -3 and a document dated 25/5/2018.

- 21.** It was his testimony that there was a case between his family and Chepayos Kemerinyang who had complained at the Group Ranch, claiming the land in dispute from his family. The Group Ranch sent seven committee members to hear the case and the members in attendance were eighty-one people. He stated that he was named among the 81 people as No. 73. The dispute was heard and the final decision or verdict was given. The person who gave or read the verdict was the Chairman of the Group Ranch, named Lokoli Lomuke. He said the parcel of land belonged to PW2's late father Kapelingorok Ariangatom. The Ranch informed her that the land was of their family and she did not have a right to it. It was his testimony that the decision was handwritten and after that the committee said they could go to the office and collect the typed proceedings. They went 4 days later and he was given an original of the proceedings and decision. The document

was stamped the 25/5/2018. The Minutes and decision were produced as P-Exhibit - 4.

- 22.** He stated that in 2019, he received a summon from the South Pokot District Council of Elders. The invitation was on 17/12/2019. When he went there he found that Chepanyos Kemerinyang had appealed to them against the decision of the Group Ranch. The complainant gave her evidence there and he also gave evidence. The claim she raised was that she be given a portion of their land, a claim similar to the one she had at the Group Ranch. The council of elders decided that their land being of the Estate of his father Kapelingorok Ariangatom be divided into two.
- 23.** He testified that he was later called to the District Commissioner's office and the decision was read and he was given a copy. There was no reference in the elder's decision to the dispute which had been made by the Group Ranch earlier. The copies were to be sent to the Ministry of Lands and Settlement of West Pokot and the Group Ranch of Chepkopegh and the Deputy County

Commissioner. He produced the decision dated 17/12/2019 and stamped on 25/2/2020 as P-Exhibit -5.

24. On 5/8/2020, he was called by one of the village elders who told him that there was a letter brought to him by one of the sons of Chepayos Kemerinyang. When he received it, it showed it was a copy of Minutes of proceeding of 25/5/2018. It appeared it related to the case they had done on 25/5/2018. It gave the committee names of seven members of Chepkopegh Group Ranch and showed that attendees were now sixty. According to the findings of the Ranch the land was to be divided into two; that the land belonged to two brothers i.e. his father and Kemerinyang Ariangatom, and that the land be shared equally between the two families. This was not the decision of 25/5/2018. He produced the minutes as P-Exhibit - 6.

25. He stated that on 16/9/2020, the Ministry wrote him a letter which stated that the decision was to be implemented in September 2020. From the time they received the decision of 25/5/2018, when the Group Ranch gave a decision about the land being theirs, there was nothing about implementation of the decision for the two

years. He produced the letter dated 16/9/2020 as P-Exhibit -7. He further stated that he went to the West Pokot County Land Adjudication Officer for consent to file this case. He produced the consent dated 13/10/2020 as P-Exhibit -6.

- 26.** He testified that on 6/10/2020 the area Chief wrote a letter about the dispute appealing for status quo. He produced the letter as P-Exhibit -9. Further, that the defendant Chepayos Kemerinyang and her family moved from the land in 1991 and have never come back. They reside on her land which is elsewhere.
- 27.** During cross examination, he stated that the parcel of land is in Chepkopegh Group Ranch and that the ranch has members. Further, that the Group Ranch has a register of members and his late father was a member of the Ranch as member number 9. Kemerinyang Ariangatom was brought in to the Ranch in 1982 and was member number 40 according to the register. Membership into Ranch was done in 1982 and for one to be a member it did not necessarily have to be that one has a parcel of land. He stated that the Group Ranch Officials are Lokoli

Lomuke, Paul Aputole and Samuel Ariongiro, who are executive committee members of the Group Ranch. He further stated that they were not the ones who used to register members since 1982 as they were made officials recently.

28. Further, that according to Exhibit -2 Mr. Matayo Kirara is not an official; that Felix Olwole is not an official according to the certificate in corporation [Exhibit 2]. He also stated that since 1982, there has not been any other registration of members apart from that one which was done then. Chepayos Kemerinyang and her late husband resided on the parcel of land for a while and her children were born while she was on the land but they were three (3) only. The other three children she bore while outside of or not occupying it.

29. He stated that the Chepanyos purchased the land where she stays currently. That as an Assistant Chief she brought an agreement to him for confirmation that she was buying the land which she is staying on now. After they bought the land in 1991 is when they moved to court. Before then they were residing on the disputed parcel of land. When

shown P. Exhibit 4 he stated that it was the case which was done by the Group Ranch was the one of 25/5/2018. Further, that there was no other dispute decision of any other date. He stated that at the dispute, the proceedings were taken by hand but he did not know on or in which book it was written as it was written in an exercise book by the Secretary one Paul Aputole. That Exhibit 4 is a typed copy of the proceedings and decision of that date. The only authentication sign on the P. Exhibit 4 is a stamp and signature on page 3 and 5 only. He urged that there is nowhere the Chairman or Treasurer of the Ranch has signed. That the only signature was that of the Secretary on pages 3 and 5 one Paul Akutole.

- 30.** When shown P. Exhibit - 6 which is to be DMFI-1, he stated that they were the second set of the Minutes of 25/5/2018. On these the Chairman, Secretary and Treasurer had signed and it bore a stamp. Further, that according to the P. Exhibit -6, the decision was that the land be divided into two. P. Exhibit-4 he was given by the Chepkopegh Group Ranch, and Similarly, P. Exhibit -6 emanated from the Group Ranch. He stated that it is only the author of the

documents who can tell which one is false. Further, that he had not given any documents or report to show that the P. Exhibit 6 is fake. He only reported to the DCI and Lands but he did not have any written report as such.

31. The witness stated that there was a complaint filed by the Group Ranch with the DCI office about the genuineness of the two documents and he was summoned to take his copy of the minutes given to him. To date the DCI office has not given a report on the documents. When shown P. Exhibit -5 he stated that the document from the Council of Elders does not state anywhere that she [Chepayos] was appealing the decision of the Executive committee of the Group Ranch. Further, that he was not aware that the Group Ranch Officials wrote a letter denying the existence of P. Exhibit -4. When shown the letter dated 7/10/2020, he stated that he did not know it.

32. PW3 was **Elizabeth Losiamu**. She adopted her witness statement dated 4/11/2020 as evidence in chief. In her statement she stated that she was born in 1948 and the 1st wife of Losiamu Ariangatom. That they lived in Taponden Village with her husband, Kapelingorok

Ariangatom and Kemerinyang Ariangatom his step brothers and their mother Cheporopkony Ariangatom. Further, that her husband later demarcated his own land in Parakason Village (still within Korellach) and they moved there and have lived there since.

- 33.** That her brother in law Kapelingorok Ariangatom also demarcated his land at Kapkitony Village during 1968, and in the year 1974 he moved with his family to Kapkitony Village. Only her mother in law Cheporopkony and Kemerinyang Ariangatom her younger son remained in Taponden village. During 1979 her mother in law went to Kapkitony Village and where she lived in the land of Kapelingorok Ariangatom the older son. Her house in Taponden Village collapsed. That was the reason she re-located. During 1981, Kemerinyang Ariangatom who had just got married requested Kapelingorok Ariangatom to allow him live in his land temporarily as he looked for his own land. She was frequent in the home of Kapelingorok Ariangatom, as she was taking care of her aging mother in law i.e. Cheporopkony Ariangatom.

34. She stated that Kemerinyang and his wife came into the elder brother's land and were shown where to build. By 1988, Kemerinyang Ariangatom was requested to leave the land of his elder brother. He moved out with his cattle and the cattle of his mother, and went to Kaptakeu Village in 1990. He then bought land at Kaptaren, and both the wife and the mother joined him in his land. The mother died in 2002 while Kemerinyang died in 2013. During the lifetime of Kemerinyang he never claimed land from his elder brother Kapelingorok. But the wife of Kemerinyang namely Chepayos started claiming land from the estate of Kapelingorok Ariangatom in 2018. The matter was taken to the officials of Chepkopegh Group Ranch and the hearing was done on the 25/5/2018.

35. She stated that she personally gave evidence and explained that the land solely belonged to Kapelingorok Ariangatom. He is the one who demarcated the land and much later permitted his young brother to stay in the land as he looked for his own land. The decision of the group ranch officials was that the land belonged to Kapelingorok Ariangatom. An appeal was made to the Kipkomo Council

of elders and who ruled that the land should be shared. He stated that he also learnt in 2020, that the same officials of the group ranch came up with a different ruling than the one which dismissed the 1st defendants claim. The 2nd set of proceedings and decision are not genuine since no two sittings were held on the 25/5/2018. Further, that the 1st defendant could not have appealed to the council of elders, if the decision of the group ranch, had been in her favour.

- 36.** During cross examination, she stated that Chepayos Kemerinyang is a wife to her brother in-law. That it is not true that according to Pokot culture before a woman is married she has to be shown or given land. She further stated that when Chepayos was to be married, she was not among the women who went to her place and participated in the ceremony. Upon Chepayos being married, she came to stay with the mother of Kemerinyang that was in Tapoyei. It is different from the parcel of land in question. They were all staying on that parcel of land and it was not specifically for Kemerinyang. After that they moved to their parcels of land and

Kemerinyang did not receive any parcel. On the parcel of land, they moved from another person came and occupied.

37. That Chepayos did not give birth to any children while living on the disputed parcel of land. The land in dispute now is Group Ranch land. She stated that she is not a member of the Group ranch and that the land she resides on has a title deed, it is not Ranch land. When referred to P. Exhibit - 4, she stated that she was present in the proceedings of 25/5/2018. She did do not recall saying that P. Exhibit 4 is the genuine document. She recalled that that as per P. Exhibit 4 the elders said the land be given to Kapelingorok. The document that stated that the Group Ranch decided that the land be divided between the two brother is not genuine or correct. She further stated that she did not have a document to confirm that the 2nd document [P. Exhibit 6] is forgery.

38. PW4 was **Cheponyong Mariakalen**. She stated that she used to live in the Chepkopegh Group Ranch and the land he had there was given to him by his father and as registered in his name. She knew the late Kapelingorok

Ariangatom as he was his neighbour and his sons Samuel Kapelingorok and Christopher Ariangatom as well. She urged that the committee of six members are the ones who demarcated the land to him but he could not recall the year. She further stated that the deceased plaintiff settled on the land first and his mother, Mary joined Kapelingorok later but he did not know if Kapelingorok built for her a house. She knew Kemerinyang the brother to Kapelingorok and his wife who came later with her husband. They left the land when they bought their land elsewhere. Since the time they left the portion they used to use fell back to Kapelingorok.

- 39.** During cross examination, she stated that the disputed land is in the Chepkopegh Group Ranch and she is a member of the Group Ranch but his membership number has not been ascertained. Further, that demarcation has not been done. She stated that when the Group register was being made in 1982, she was present. She was not present when the dispute between Chepayos and Kapelingorok's family was determined in 2018.

40. PW5 was **Matayo Chemungar Kiram** who adopted his witness statement dated 4/11/2021 as evidence in chief. He stated that he is a committee member at Chepkopegh Group Ranch. That there was a meeting of 25/5/2018 and produced as P. Exhibit 4. There was another meeting the same day of 25/5/2018. The committee members present on that date included him. He stated that he only attended the 1st meeting which is shown as P. Exhibit - 4. In the meeting, the committee decided that the land belonged to Samuel Kapelingorok. The 2nd set of Minutes' report indicated that the land was to be subdivided between the deceased Kapelingorok and the Kemerinyang Ariangatom. The Group Ranch Minutes were taken by the Secretary Paul Aputole.

41. During cross examination he stated that he is an official of the Chepkopegh Group Ranch and a committee member but had not produced any Minute to show he was appointed as a committee member. He stated that Kapelingorok Ariangatom was a member of the Ranch and that disputes in the Ranch between members are resolved by the Ranch Committee. He stated that the meeting over

the dispute herein was on 25/5/2018 and no other date. The minutes were written by Paul Aputole. When shown P. Exhibit -4, he stated that he had not signed the minutes and even other officials of the Ranch had not signed. When shown P. Exhibit - 6 - Minutes of same date, he stated that these show that the Chairman, Secretary and Treasurer signed. He stated that in his statement, he said P. Exhibit 6 is fake but he had no independent report to show the same. That the Secretary to the meeting is the only one who can say which of the two is genuine and there is no report in any Police Station that one of the two is fake.

- 42. PW6** was **Emmanuel Klatan Kedireng**, the Assistant Chief of Silaa Sub-location. He adopted his witness statement dated 4/1/2020 as evidence in chief.
- 43.** In open court, he stated that there was a dispute between the deceased plaintiff and Chepayos family and he attended the meeting that tried to resolve it. That the meeting was on 25/5/2018 as shown in the Minutes he was referred to. He added that in the list of those who attended he was one shown. After the dispute was heard

the committee decided that the land was for Kapelingorok Ariangatom. The Group Ranch chairman read the verdict and the Minutes are signed and stamped by the Chepkopegh Group Ranch. When shown P.Exhibit 6, he stated that it was another set of minutes that show that 60 people attended and he was attendant No. 51. The 1st meeting Minutes showed 81 people attended it. He stated that he was not in the 2nd meeting and further, that there was no other meeting other than one he attended.

44. During cross examination, he stated that he is not a member of Chepkopegh Ranch. That Kapelingorok Ariangatom and Kemerinyang Ariangatom are both members of the Group Ranch. He stated that the meeting which was held was of 25/5/2018 and there was no other. That the one who took minutes was the secretary. When shown P. Exhibit 4, he stated that there is no signature by the Chairman. Paul Akutole did not sign and neither did the treasurer.

45. When shown P. Exhibit 6, he stated that the Chairman, Secretary and the Treasurer all signed. He further stated that P. Exhibit 6 is fake for the reason that it has less

membership of those who attended. He stated that there is no report from the DCI that the P. Exhibit 6 is fake and no report in any Police station that is fake.

- 46. PW7, Felix Longole** adopted his statement dated 4/11/2020 as evidence in chief. He stated that he is a committee member of the Chepkopegh Group Ranch. That his name is on the report in court as a co-opted committee member and it appears in minutes.
- 47.** During cross examination, he stated that in the Group Ranch, there is a register of members. For one to be registered as a member he has to have a parcel of land there and that is why he is in No. 334 in the register. Kemerinyang Ariangatom who was the husband to the 1st defendant was also a member and was number 40 in the register. That in such dispute the secretary takes down minutes. There was only one meeting in relation to this case done on 25/5/2018. The secretary took down minutes. He was Mr. Paul Akutole.
- 48.** He stated that after the meetings all committee members sign minutes. The minutes which gave land to the plaintiff were the genuine ones. The minutes which show that the

land was to be divided between the plaintiff and 1st defendant are fake. He stated that he had no report to show that the minutes which divided the land are fake. When referred to P. Exhibit 4 he stated that on those minutes there is nowhere shown that the Chairman signed, where the Secretary, Treasure and even himself signed.

- 49.** When referred to P. Exhibit 6 he stated that the Chairman signed. The Secretary and Treasurer also signed the Minutes. Further, that the person who wrote the minutes is the only one who can confirm which minutes are genuine and which ones are fake.
- 50.** The plaintiff closed his case and the defendant called witnesses in support of theirs.
- 51. DW1** was **Chepayos Kemerinyang** who adopted her witness statement 24/2/2021 as evidence in chief. She testified that the land is in Kolerach and is under the Group Ranch known as Chepkopegh Ranch. Her husband, the late Kemerinyang Ariangatom was a member and his name appears in the register as Number 40. She produced a copy of the register marked as DMFI -2. She also

produced the Grant of letters of Administration *Ad Litem* as D. Exhibit -3. She stated that the Chief, Kapelingorok took her land. That when he took possession of her land she informed the committee of the Chepkopegh Group Ranch. The committee listened to the dispute and decided. It said the land be subdivided between Kemeringyang and Kapelingorok. The two are now deceased and thus, the land was to be given to her and the son of Kapelingorok. She produced the Minutes of 25/5/2018 marked as DMFI-1.

52. After the decision the plaintiff refused to agree to the subdivision. When he refused she reported to the Lands Office in Kapenguria and the lands officers said they would visit the land to subdivide it. They gave her a letter dated 16/9/2020 from the Land Adjudication Officer which she produced as D. Exhibit - 4. She stated that the Land Adjudication officer did not visit as the Chief did not permit the officer to come. They chased them away with clubs then the plaintiff sued her.

53. She went to the Pokot Council of Elders before court here to have decided the dispute. The elders heard the dispute

and the chief was there. He refused their decision and said he would come to court. She produced the minutes dated 25/2/2020 as D. Exhibit - 5. She stated that she bought the land she currently resides in. She stated that they bought the land from Shiatukei Tukoreng and produced a Copy of the agreement as D. Exhibit -8.

- 54.** She urged that the decision of the committee was that the land be divided between Ariangatom and Kemerinyang. The committee wrote a letter dated 7/10/2020 to denounce the decision the plaintiff produced. She produced the letter marked as DMFI-7. Further, that contrary to what the chief said, she lived on the land for many years.
- 55.** During cross examination she stated that she took the case to the Group Ranch before the time the case in court was brought. That when she got married they divided the land and gave her. That the whole land was being farmed and there were cows reared on it. Her mother in-law's house and her brother in laws were in one compound. She lived in her mother in laws house for a short time, and I went to build her own house in the same compound.

- 56.** She stated that on 25/5/2018, when the dispute was handled by the committee, she was present. That the committee decided the land be divided into two and after the decision, a letter was written by the Group Ranch committee to the Land Adjudication office but she did not remember who brought the letter and could not produce a copy.
- 57.** She stated that she was the one who took the dispute to Pokot South Elders on 17/12/2019. That the decision of the elders was copied to the offices named at page 2. At page 2 the committee say they had "unfortunately" not forwarded their decision to the Land Adjudication Committee but she did not know that issue they said. When referred to D. Exhibit 4, she stated that it was a letter written of 16/9/2020 which came after the decision of the elder's decision of 25/2/2020. This letter **was not** because she arranged with the elder that they say half the land was hers.
- 58. DW2 was Daniel Tulee Lokatap** who adopted his witness statement dated 24/2/2021 as evidence in chief. He stated that he was present on 25/5/2018 in the

meeting held then. That the two current plaintiffs were in attendance and Chepayos Kemerinyang was present. That the decision was that the land be divided into two between Kemerinyang and Kapelingorok. He stated that the plaintiffs were present when the decision was made.

- 59.** When shown P. Exhibit 4, he stated that it was another set of minutes alleged to be of the same date which were a lie that the land was to be all to be given to Kapelingorok. The land was to be divided into two. He stated that he was the one who was called by the mother to Kemerinyang and Kapelingorok to set the boundaries between them. He was present when mother did that settlement of her children.
- 60.** During cross examination he stated that on 25/5/2018, they went to the meeting of the land was in Kolerach sub location. When demarcation took place was when he knew the mother was to give them the land. Further, that he first went to the land in 1985. That PW1 was not one of the committee of adjudication members. His mother, Mary was given the land on demarcation that lies in his area. He stated that he has never been a committee member of the

adjudication committee and did not see his name in the list of attendances, neither was the name of Nicholas reflected but the minutes were not fake.

61. DW3 was Lokolo Lomuke, the Chairman of the Group Ranch of the Chepkopegh. He adopted his witness statement dated 24/2/2021 as evidence in chief. He stated that he has been Chairman since 2000 to date and that his name appears on the certificate of the Ranch. It is on P. Exhibit-2. That the Ranch has a register of members and Kapelingorok Ariangatom was a member No. 9. Kemerinyang Ariangatom was member No. 40. He produced the extract of the register as D-Exhibit 2.

62. He stated that in the dispute before court they resolved that the land was to be divided equally between Kapelingorok Ariangatom and Kemerinyang Ariangatom who are now deceased. It was to be divided between Samuel Kapelingorok and Chepayos Kemerinyang. They called the two parties or sides to come to the meeting and gave both sides chance to give evidence. They took minutes of the meeting and gave the decision same date. They gave Chepayos and Kapelingorok three days to come

and pick the minutes because they went to type the minutes. The minutes were signed by the Chairman, Secretary and Treasurer. When shown Minutes of 25/5/2018, DMFI-1, he stated that his name was there as Chairman of the minutes and he signed the minutes. The Secretary and Treasurer signed, produce the minutes and decision.

- 63.** After giving them the Minutes, they later understood that Samuel want to write his own minutes. He made minutes that he was given the whole land. When shown P. Exhibit 3 he stated that they were minutes purported to be of the meeting. Stating that they had a stamp written as Chepkopegh Group Ranch he urged that he did not know where he got the stamp and further, that the stamp was not of the Group Ranch. Additionally, that the minutes did not bear his signature as Chairman. Also the Treasurer and secretary had not signed. They reported to Kapenguria Police Station and he produced the Occurrence Book Number they were given. That the police informed them, the matter was in court and they left the matter at that. He stated that the statement they wrote to

say the minutes were a forgery were in the letter dated 7/10/2020. He signed the letter, the Secretary and Treasurer too signed. He produced it as D-Exhibit -7.

- 64.** The witness urged the court to find that the land was to be divided between the disputants as they decided. The reason for the land to be divided was because the two disputants are members and the children are of the same parents. The land used to belong to or owned by Mary. Mary was the mother to Kemerinyang and Kapelingorok.
- 65.** He stated that they did not file the papers of decision with the Adjudication Section because the disputants accepted their decision. The Ranch decision is always final. A person cannot be registered in the Ranch register if he does not own land in the Ranch.
- 66.** During cross examination he stated that he took over chairmanship of the group in the year 2004. That from the year 2018, the demarcation and Surveyors had been done for the Group Ranch. The records of the survey and the maps were kept after that by the Land Adjudication and Settlement Officer. When Chepayos Kemerinyang came to complain, all the records were with the office of the Land

Adjudication and Settlement. Before the year 2018 Chepayos had complained about the land but he could not recall the date or time. He stated that the case of 2018 is the only one recorded.

- 67.** He stated that there was never a complaint by the husband to the 1st defendant against Kapelingorok or his children. He stated that the minutes were being recorded by Paul Aputole, the Secretary of the Group Ranch and there is a book of Group Ranch where we record the minutes. That the minutes are handwritten and the Secretary to the committee takes the minutes for typing and has to be present when the minutes are taken for typing at a cyber or place.
- 68.** After the sitting of the 25/5/2018, they told the concerned parties to come and receive typed minutes. The person to give out the minutes is the secretary, in the presence of the Chairman and the other officials. He stated that he was present when Samuel Kapelingorok was given the minutes of 25/5/2018. When shown P. Exhibit 4- the minutes of 25/5/2018 he stated that they were the minutes, the persons present in the minutes were about

60. He stated that he disputed the minutes when he was shown another set of minutes which he stated did not originate from the Group Ranch and he could confirm the rubber stamp is of the Group Ranch. He did not know the signature on it but confirmed that they were signed.

69. He disputed the decision that awarded all the land to the plaintiff and urged that there would be no need to change or rectify any records at the Land Adjudication office if it was the correct one. If the decision was that the land be divided into two there would be need to go to the Land Adjudication office to rectify the records. After the decision they made at the committee in 2018 they never did anything. In the year 2019, they took the decision they had made to the Land Adjudication and Settlement Office. The committee was given a stamp copy that they had delivered the decision to the office but he had not brought the stamped copy. He stated that the Land Adjudication and Settlement Office gave them a letter to show they had given them the decision but he had not brought the letter. When referred to D. Exhibit -4, the letter dated 16/9/2020, he stated that they were being called to the Land office.

- 70.** When referred to P. Exhibit 5 - Proceedings of Pokot Elders Council decision, he stated that he was not aware that Chepayos the dispute to the elders. That having given her the land in 2018 by the committee he would be surprised that on 17/12/2019, she could once more take the case to the Pokot Council of elders. According to the Group Ranch by Laws, once the committee decided a matter or dispute and he is not satisfied he can go either to the Chief or the Land Adjudication Officers. There is no by-law that one if dissatisfied, he/she would take appeal to the Pokot Council of Elders. He did not know that the Pokot Elders decided after her complaint that the land be subdivided into two.
- 71.** When shown P. Exhibit 5 she stated that it shows that the decision was made on 25/2/2020. When shown minutes of 25/5/2018 he stated that it was the decision they made which decided the land be divided into two. The parties were told to come for the decision in 4 days. That it shows the person who went for it received on 5/8/2020. He was present when the decision was collected by the recipient and that it was Samwel Kapelingorok, the plaintiff who

collected it. The Secretary was the one who gave out the copy.

72. When referred to the 1st and 2nd Defendants List of documents dated 24/2/2021, document No. 8 - the Occurrence Book [OB] showed that the report was made on 18/11/2020. He stated that the person who made the report was himself and the Secretary. By the time they made the report they had not gotten the information by the Land Adjudication Committee that they had to come to court. In late 2020 they had been summoned to the Land Adjudication Office and had been informed there were two decisions in existence and the office referred them to court. Following the complaint made to police there is no one who has ever been charged in court over it.

73. DW4 was **Lolinga Lokoriongot** who adopted his witness statement dated 24/2/2021 as evidence in chief. He stated that he was present when the committee made a verdict on 25/5/2018. The decision was to subdivide the land between the families of Kapelingorok and Kemerinyang. There was no other decision made that the land belonged entirely to Kapelingorok.

- 74.** During cross examination, he stated that he was a committee member and became a member in 1974. He stated that PW1 was a member of the Ranch but not a committee member. He was not among those who assisted in the demarcation of land. He was among those who took the committee officials round but he was not a committee member. The suit land in question herein was initially given to the mother to Kemerinyang in 1972. Mary was there at the land from the time when they were young.
- 75.** He stated that he attended the meeting of 25/5/2018 and was among those who gave evidence in it. Further, that Felix Lokoli was not a committee member. He was not an elected but co-opted committee member.
- 76.** **DW5** was No. 75612 **Sergeant Edward Oketch** currently attached to the DCI in West Pokot. He stated that he received summons issued to the DCIO for production of the certified copy of the OB No. 42/28/11/2020. He stated that there are two OB Nos' appearing for that period i.e. OB 42/28/11/2020 which is not relevant herein. There is the relevant one being No. 42/18/11/2020. From the OB

the report was over a land dispute andf. It was reported by one Benson Poghisho a resident of Chepemeria. He stated that the suspect was called to the office and when he was being interrogated and a statement recorded he excused himself and it came to be known that a matter had been filed in court. The Investigating officer then put the file in abeyance awaiting the matter. The accused in that matter was Kapelingorok Samuel. He produced a certified copy of the OB as D. Exhibit 8.

- 77.** During cross examination, he stated that he reported to the Kapenguria DCI office in 2021. By 2018 he was not in Kapenguria DCI office. That from the report the name of the "known person" was not recorded. The accused was summoned and the following report is not indicated in the OB but it is in the file that was opened when statements were recorded. Investigations began, parties recorded statements then where one of the suspects was called he began recording statement and he excused himself midway and left. Later they learnt that a suit was in court. Investigations were underway but the dispute was said to be in court. The investigations were not thus concluded.

78. DW6 was Paul Aputole the Secretary to the Group Ranch Chepkopegh. He stated that he was secretary from the year 2000 up to now. That he hears cases and write minutes and records them in the Minute's book. He stated that he had the minute's book in court and he was the one who wrote the minutes. The case between Kapelingorok and Chepayos was conducted and he recorded the same in the minute's book. He noted the people who spoke in the case and the decision of the committee. The decision was that the parcel of land be subdivided into two as between Kapelingorok and Chepayos. After writing the minutes he signed them and the Chairman and Treasurer had to sign them. After the minutes were ready they typed them and called the parties to take copies.

79. He stated that he saw the typed copy when he was referred to P-Exhibit 6, he stated that he did not know of the other set of minutes

80. During cross examination, he stated that he was the one who wrote the minute's book and there was a minute's book which was lost but it did not contain the decision under reference. The decision was written in the book he

produced in court as D. Exhibit 9. The entries in between the date of 22/4/2002 were general. Regarding the 25/5/2018, there are two sets of minutes following each other in the same book which refer to the same dispute. In the first minutes of the 25/5/2018, it shows Elizabeth Losiamu talked as one of the family members. She was present and spoke. When referred to the first version of minutes of 25/5/2018 in book he stated that in the decision, the handwriting is same but the pen is different. It was a pen ink that ended. He stated that the first set of minutes are crossed and that the X next to the minutes at the left margin were not correct.

- 81.** When shown the 1st set of the 25/5/2018 Minutes he stated that the first sentence of the decision stated that the parties were one family and should go home and settle the matter in peace. Then the next sentence says the Ranch committee is to divide the land equally. That the words he wrote that they go home and settle the matter in peace and also that the committee divided land equally is what was said in the meeting. When shown the 2nd set of the 25/5/2018 he stated that the first sentence starts "the

family of Kemeringyang and Kapelingorok to get equally share". He stated that regarding the writings of the sentence the ink of the pen is different. The extra sentence "the adjudication committee should have divided the land equally or so also has a different ink pen.

- 82.** He stated that after 25/5/2018, they did not talk with the parties again over their dispute. When referred to minutes of 1/7/2018 - still in minutes Book he stated that they referred to Chepayos and Kapelingorok family son. That those minutes refer to the family meeting before the report and he may have made an error on the date. When referred to minutes to show that Christopher Kapelingorok spoke in the meeting he stated that the writing that the land Adjudication committee and the large committee to subdivide land is written on a different ink pen writing and he was the one who wrote it. When referred to D. Exhibit 1 - the typed minutes, he stated that they do not contain the words handwritten that they 'go home and discuss'. He only typed the minutes to give them what one is to share. When referred to the 1st set of minutes of 25/5/2024 he stated that the minute's state "though the land was

demarcated by Kapelingorok". They also said "they share equally" it was the opinion of neighbours and family.

- 83.** He stated that after he typed the decision, it took about 1 month to take it to the land office. They took it to the Lands Adjudication office together with the Chairman. As a committee they did not receive any letter from the Land Adjudication office in 2018. The letter they got from the 2nd adjudication office was in 2020.
- 84.** The Defendants then closed their case.
- 85.** The parties were then directed to file submissions on the suit.

Plaintiffs' Submissions

- 86.** Counsel for the plaintiff submitted that the first issue for determination was; Who among the plaintiff's father (Kapelingorok Ariangatom) and the plaintiff's grandmother (Maria Cheporopkony) demarcated the suit land and when. He reproduced the contents of the plaint, defence and counterclaim and urged that it is trite law that parties are bound by their pleadings and that evidence can only be adduced to support the pleaded case. Further, that any evidence led by any of the parties which does not support

the averments in the pleadings, or put in another way which is in variance with the averments of the pleadings goes to no issues and must be disregarded. He placed reliance on **IEBC and another Versus Stephen Mutinda Mule (2014) eKLR** in this regard.

- 87.** Counsel submitted that according to the uncontroverted evidence of the plaintiff (PW2) the suit land was demarcated by his father in 1968. A Land Committee of 6 persons did the demarcation, and showed the boundaries of the land to him. That evidence was supported by the evidence of PW1 and the only surviving member of the 6-man committee that was doing the demarcation. Further that in 1974, the late Kapelingorok Ariangatom, and the family moved to the land he demarcated, leaving the mother and Kemerinyang Ariangatom at Taponden village. The witnesses and his family lived in the same village.
- 88.** Counsel submitted that the evidence of PW1 and PW2 on the demarcation of the suit plot was well supported by the evidence of PW3, Elizabeth Losiamu a sister in law to Kapelingorok Ariangatom. She was married to his step brother, Losiamu Ariangatom. The evidence of PW4,

Cheponyorio Meriakalen also supported the plaintiff's case that the suit land was demarcated by Kapelingorok Ariangatom.

89. Further, that no evidence was adduced to the effect that the land demarcation committee allocated land to the 1st defendant's husband - Nor was any evidence adduced that the land demarcation committee, allocated land to the 1st defendant's mother in law - Mary Cheporopkony Ariangatom. The evidence on record is that Mary Cheporopkony Ariangatom, moved into her son's land after her own house in Taponden Village collapsed. A house was put up for her, and it was in the said house that she housed her son and his wedded wife before they were shown where to put up a house within the compound, by Kapelingorok Ariangatom.

90. He urged that there was no evidence tendered that the suit land had been demarcated for Kemerinyang Ariangatom by the land committee, and which he moved into and settled his family as pleaded in paragraphs 5, 6, 8 and 10 in the defence and counterclaim. The land where he squatted was that of his elder brother and who had

been demarcated for the said brother in 1968, and occupied in 1974. Counsel urged the court to find that the suit land was not family land. It was demarcated for the plaintiff's father and who allowed his younger brother to occupy part thereof as he worked hard to buy his own land and which he did and then moved out. He remained a licensee in the suit land and otherwise, he had not proprietary claim whatsoever on the said land.

91. Counsel urged that it is on record that after the 2nd defendant heard the claim of the 1st defendant on the 25/5/2018 against the family of Kapelingorok Ariangatom, two different decisions were said to have been made. That this court shall decide which among the two decisions was the genuine one.

92. He urged that upon due consideration of the evidence on record, there are compelling reasons to find and hold that the decision of the 2nd defendant was that the land belonged to the family of Kapelingorok Ariangatom. The reasons are as follows;

a) According to the evidence of DW3, Lokoli Lomuke, the Chairman of the 2nd defendant, he stated that from 2018, the demarcation and survey work had been

completed for the group ranch. Further that the records of the survey and the maps were kept by the land adjudication and settlement office. He stated that as DW1 came to complain, all the records were with the office of the Land Adjudication and Settlement Office. Consequently, if any decision arrived at by the committee would require the amendment or rectification of the records held by the Land Adjudication and Settlement Officer then such decision had to be forwarded to the LASO immediately in order for the changes to be reflected in the records. But it was his case that if the decision did not require changing any records or maps, then there was no need to forward the decision to the LASO.;

- b) If the true decision was that the disputed land had belonged to the family of Kapelingorok Ariangatom, then that would not have involved any changes on the documents held by the LASO. But if the decision was that the land be shared equally then there would have need to forward the decision to the Land Adjudication and Settlement Officer;
- c) The witness admitted that after the decision was made on 25/5/2018, the committee did nothing, until two years later. There was no explanation at all for the two-year delay. It is therefore most likely that the decision arrived at did not need any action to be taken by the LASO. That could only have been a decision that the land solely belonged to the family of Kapelingorok Ariangatom.

93. Counsel urged that it is also on record, that after the 25/5/2018, the 1st defendant commenced another case before the Kipkomo Council of Elders by filing her complaint on the 17/12/2019. The complaint was exactly

like the one she had before the group ranch committee on 25/5/2018. In her statement, she never disclosed that the case had been heard and decided by the 2nd defendant. The decision was that the land be shared between the two brothers and was copied to the Land Adjudication and Settlement Officer, and when his attention was drawn to the earlier decision (P. Exhibit No. 4) it now became apparent that there were two contrasting decisions, and the need for the court to intervene became apparent.

- 94.** He urged that if the decision of 25/5/2018 by the 2nd defendant had been in favour of the 1st defendant, there is no way she hold has gone to the Kipkomo Council of elders to commence another dispute. Counsel urged the court to find and hold that the commencement of the complaint before the Kipkomo Council of elders, and the concealment of the fact that the decision had already been made by the group ranch, strongly points to a decision that was against the defendant by the group ranch.
- 95.** Counsel urged that the evidence of PW6 (Matayo C. Karan) and PW7 (Felix Longole) is also quite relevant. The two are

nominated members of the Group Ranch Committee and their names are reflected in the minutes produced as plaintiffs exhibits Nos.4 and 6. These committee members have clearly stated that they were present as indicated in the minutes and that the decision made by the chairman and to which they were parties, was that the land belonged to the family of Kapelingorok Ariangatom. In terms with the plaintiffs exit No. 4. The same position has also been supported by PW6 (Emmanuel Kilatan Kedireng) the area Assistant Chief.

- 96.** Counsel submitted that the handwritten record clearly stated that the land had been demarcated by Kapelingorok Ariangatom. It was also clear that on the 11/07/2018 both PW1 and DW1 had gone back to the chairman and the Secretary over the same matter. That could only be in terms of what had been stated in the minutes produced as P. Exhibit 4, that the family of the 1st defendant do approach the children of the late Kapelingorok Ariangatom, and see if they could be given something. Otherwise if the decision of the 2nd defendant

was that the land be shared equally, then there would have been no need going back home, for any discussions.

- 97.** Counsel urged the court to find and hold that the ruling reflected in P. Exhibit 4 was the genuine one and that the one reflected in P. Exhibit 6 was an afterthought meant to defeat the interests of justice.
- 98.** On whether the 1st defendant had the requisite locus standi to lodge the land claim to the group ranch committee in view of the fact that she had no grant of letters of administration, counsel urged that the ad litem grant in her favour and which is a grant that she only obtained. (D. Exhibit 1) was obtained on 26/11/2020. The decision in issue was delivered on 25/05/2018 by the committee of the group ranch. The requirement to file/lodge a land claim under the land (group representatives) Act (Since repealed) has to be filed with the group ranch. He cited the provisions of Section 82 (a) of the Law of Succession Act and urged that the claim before the group ranch committee was made on behalf of the estate of her late husband, Kemerinyang Ariangatom. She was claiming land on behalf of her late husband.

Apparently, the 1st plaintiff at the time the claim was filed against him, had no grant over the estate of their father, Kapelingorok Ariangatom. The 1st plaintiff similarly therefore had no locus standi to be sued before the committee of the group ranch. He urged that Grants do not operate retrospectively and prayed the court to find and hold that the claim was incompetent and the resultant decision was null and void. He placed reliance on ***Kitale HC Misc. Civil Appl. No. 25 of 2005 Republic Versus Minister of Lands (Settlement & Housing)*** in this regard.

- 99.** Counsel urged that now that the 1st defendant had no *locus standi* to lodge a claim to the Committee of the group ranch, the decision of the group ranch committee was nullity. The 1st plaintiff also had no legal capacity to be sued.
- 100.** Counsel urged that if the court finds and hold that the 1st defendant had no locus standi to lodge and prosecute the case/complaint before the group ranch committee, then the decision of the group ranch (whichever it was) can be declared a nullity and allow the plaintiff suit in terms with

prayer Nos. (a) and (b) of the plaint. With cost and interest. The counterclaim of the 1st defendant to the extent of being founded on the decision of 25/05/2018 should be dismissed with costs. Should the court find that the 1st defendant had the capacity to lodge the claim, then the court should allow the plaintiffs claim in terms of prayer Nos. (c) and (d) with costs and interest

Defendants' Submissions

101. Counsel for the defendant submitted that it is not in dispute that the suit property is situated within Chepkopegh Group Ranch. It is equally not in dispute that the one Kapelingorok Ariangatom the plaintiffs' father is a member of Chepkopegh Group Ranch Being Member No.9 while Kemerinyang Ariangatom is husband to the 1st defendant was a Member No.40. What is the main issue of contention is whether the suit land is land that belonged to Mary Ariangatom if so should the parcel be shared among the sons of the deceased.

102. Counsel reproduced the evidence of DW1 and DW4 and urged that it is worth nothing that as per the register of members the Group Ranch registration of Members was

done on 12/1/1982. That Kemerinyang Ariangatom could not have been member of the group ranch if he did not have any property within the Group Ranch. Further, that the Register captures the qualifications for membership being customary. Registration of the members to the group ranch could not be done if one did not own a parcel of land within the ranch. The parcel of land in which the 1st Defendant is in occupation was land which he purchased after he had become a member of the group ranch.

103. Counsel submitted that the Group Ranch Chairperson gave his testimony did confirm that all the members in the Group Ranch who are on the register must own property before they become registered members of the Group Ranch. He urged that the plaintiffs together with their witnesses are not disputing the fact that the 1st defendants' husband was in occupation of the suit property before he moved to the parcel he purchased. Clearly the suit parcel is land that belonged to Mary Ariangatom. He urged that the parcel of land be shared equally between the plaintiff and the 1st defendant.

104. On the issue of which set of minutes of 25/05/2018 is genuine, counsel submitted that under the Land Group Representative Act (Cap 287) the Group ranch representative has the mandate of handling disputes between its members. The plaintiff and the 1st defendant in the present case are both beneficiaries of land within Chepkopegh and by virtue of the right of survivorship from the original member of Chepkopegh group Ranch.

105. He urged that DW1 sought to claim a share of the estate of her late husband from the Plaintiff who had denied them access to their parcel of land hence the minutes of 25/05/2018. The plaintiff together with their witnesses all confirmed that indeed the meeting was held on the 25/05/2018. The defendant and its witnesses all equally confirmed the same. DW1 and PW1 all confirmed that the meeting was being chaired by one Lokoli Lomuke and the minutes were being taken by the secretary of the Group Ranch one Paul Aputole. DW6 who was the author of the said minutes was put to task to explain the 2 set of minutes he confirmed that all the proceedings of the said Group ranch are records on a black book. The said book

upon recording the proceedings the parties are issued with respective copies of the decision upon the same being typed. The decision delivered on the 25/05/2028 was the decision that the suit parcel of land be shared between Kapelingorok Ariangatom and Kemerinyang Ariangatom who were the sons of Merissa Ariangatom.

106. The plaintiff raised issued that the report was a pure forgery but no report was attached to prove the same was indeed forgery a pending investigation was ongoing before the plaintiff proceeded to file the current suit in court. DW2 confirmed that any decision of the group ranch must to be signed by the 3 officials of the Ranch In the minutes produced by the plaintiff as exhibit 4 where the decision was that the land belonged to Kapelingorok Ariangatom. The said minutes were not signed by the 3 officials of the Group Ranch and only bear a stamp of group ranch and a signature however the author of the said minutes is unknown. If indeed the said minutes as alleged by the plaintiff were authored by the group ranch official was upon the plaintiff to call the author of the said document in the present case none was called therefore the

originality of these minutes is unknown. He urged the court to disregard the same.

107. Counsel submitted that the black book was produced in court and the only minutes that were on the book were those of sharing property between the plaintiff father and the 1st Defendants Husband. Upon delivery of the said decision of the group ranch committee under the Third Schedule of the Land Group Representative Act Cap 287 any person who is aggrieved by a decision of the committee may tell the group representative will not agree to decide the matter appeal to the registrar of group representative. In the present case the plaintiff has never appealed the decision until they filed the current suit. He urged that the report of 25/05/2018 sharing the property between Kapelingorok Ariangatom and Kemerinyang Ariangatom was the genuine decision and urged the court to find so.

108. Counsel submitted that DW1 who is the legal administrator of the estate of Kemerinyang Ariangatom clearly demonstrated that they occupied the suit property before they relocated from the parcel of land to the one

they had purchased. He urged that the defendant has proved their case therefore the judgment be entered in terms of the counter claim. He also prayed that the plaint be dismissed with costs.

Analysis and Determination

109. Having considered the claim and the counterclaim, the following issues arise for determination;

- 1) Whether the proceedings before the Group Ranch Committee were irregular.**
- 2) Which of the decisions issued by the 2nd defendant regarding the sharing of the suit land is genuine.**
- 3) Whether the Plaintiff is the rightful owner of the suit land**
- 4) Whether the Counterclaim is merited.**
- 5) Who to bear the costs of the suit.**

110. This court now determines the issues sequentially. However, I note that the plaintiff raised a number of issues which could not go unaddressed by this court. For instance, the plaintiff urged that the 1st defendant had no locus standi to lodge the complaint in the committee as she did not have a grant of letters of administration to represent the estate of her husband. Further, that one of the sets of minutes produced by the adverse parties was

not genuine. This court cannot gloss over the issues as they form the foundation of the other issues.

(a) Whether the proceedings before the group ranch committee were irregular

111. The Plaintiff took issue with the proceedings which the Group Ranch conducted over the suit parcel of land. They were evidence by Minutes produced as P. Exhibit 4 and P. Exhibit 6. It is not in contention that the Plaintiff's family participated in the dispute. My understanding of the process and aim of the proceedings is that they were for purposes of resolving the dispute between the Plaintiffs' and the 1st Defendant's family. It was conducted in accordance with the procedures of the Group Ranch Committee, and in my view, was one of the Alternative Justice Systems that are recognized constitutionally under Article 159(2)(c).

112. In it, most of the plaintiffs' and Defendants' witnesses acknowledged that, the Group Ranch Committee did conduct the proceedings and arrive at a verdict. While the defendant's witnesses testified that the verdict was that the land was to be divided into two, the Plaintiffs' testified

that it was not to be divided but that it was given to Kapelingorok.

113. PW1, testified that the Executive of Committee of the Ranch handled a dispute as it was a requirement of the Committee whenever there was a dispute on land in the Ranch. Further that the Committee is the one that knew who the owners of the lands were. PW2 added that there was a dispute between his family and Chepayos Kemerinyang who claimed the land in dispute from his family. A seven-man Committee of the Group Ranch heard the case and the members in presence of eighty-one (81) people. It arrived at a decision that the parcel of land belonged to PW2's late father Kapelingorok Ariangatom. PW5, a committee member, testified that he attended the meeting but did not sign the minutes. He termed the Minutes, P. Exhibit 6, signed by the Chairman, Secretary and Treasurer as fake. His oral testimony was that P. Exhibit 4 was the genuine one. PW6 the Assistant Chief added that he attended the dispute and that it decided that the land belonged to the Kaperingorok Ariangatom. He acknowledged that the Minutes, P. Exhibit 4 was not

signed by the Chairman and Treasurer but for Exhibit No. 6 the two signed together with the Secretary.

114. On the defence part, DW1 also stated that there were proceedings before the Committee. It gave half of the land to her but the Kapelingorok refused to subdivide the same to her. DW3 the Chairman of the Group Ranch testified that the Committee heard the dispute and gave a verdict. It was that the land be divided into two as between the disputing brothers. He added that he gave the parties the copies of the Minutes but Samuel (the plaintiff) went to author his own Minutes. DW4 also said that he was in the meeting of 25/05/2018 that decided that the land be divided into two as between Ariangatom and Kemrinyang families. DW6, Paul Abutole, was the Group Ranch secretary testified as much.

115. The Plaintiff's took issue with the validity of the proceedings before the Group Ranch, arguing that when the 1st Defendant took part in them she had no locus standi to do so since she did not have letters of administration of her late husband. Three issues arise from this argument and evidence before the court.

116. First, even if the proceedings were irregular or not in that by the time the 1st Defendant did not have letters of administration to the estate of her late husband, the proceedings are not the sole piece of evidence this court is to base its decision on otherwise it would have just called the evidence as to the genuineness or otherwise of the Minutes and decided the matter based on its finding. The Court has to evaluate the evidence now before it. And as at this time instance the 1st Defendant has a grant of letters ad Litem.

117. Secondly, the Plaintiffs called on this Court to determine whether the set of Minutes signed by the Secretary alone, produced as P. Exhibit 4 is genuine or the other set signed by the Chairman, Secretary and Treasurer, produced as P. Exhibit 6 is. In essence the plaintiffs acknowledge the regularity of the proceedings before the Group Ranch. In any event they were conducted under the alternative justice systems which is a constitutional function and which does not have to necessarily follow the rigours of the law.

118. Thirdly, as I have stated the Minutes are not the sole evidence this court shall rely on in determining this matter. Of importance is the evidence of the witnesses now before the court as to who the owner of the parcel of land in issue is.

119. Be that as it may, in my analysis I found that the 1st defendant took out a grant of letters of administration ad litem on 25/11/2020, yet the impugned decision was rendered on 25/5/2018. Ordinarily, this would be a valid point if the proceedings that were in question were those of a formal body, a quasi-judicial body or a judicial body such as a court. However, in the present scenario, the group ranch committee was an informal forum that is not beholden to the same rules of procedure that the courts are. Therefore, in this regard, there was no requirement for the 1st defendant to have taken out the grant before lodging the complaint.

120. Additionally, Article 159(2) (c) provides as follows;

(2) In exercising judicial authority, the courts and tribunals shall be guided by the following principles.

...

(c) alternative forms of dispute resolution including reconciliation, mediation, arbitration and traditional dispute resolution mechanisms shall be promoted, subject to clause (3).

121. Alternative Justice Systems and the decisions therein do not rely too much on the process and can be legally recognised as long as it respects the human rights of the parties.

122. Additionally, the Plaintiff sought to rely on his copy of proceedings where both the plaintiff and 1st defendant was involved in. He participated in the proceedings and did not raise the issue of locus standi at that stage. He therefore acquiesced and cannot be seen to challenge the same at this point. In any case, if the court was to consider his point, even the decision he seeks to rely upon would not be valid in the circumstances.

123. I have also taken into account the provisions of Sections 32 and 33 of the Law of Succession Act which provides as follows;

32. Excluded property

The provisions of this Part shall not apply to-

(a) agricultural land and crops thereon; or

(b) livestock,

in the various Districts set out in the Schedule:

West Pokot

Wajir

Turkana

Garissa

Marsabit

Tana River

Samburu

Lamu

Isiolo

Kajiado

Mandera

Narok

33. Law applicable to excluded property

The law applicable to the distribution on intestacy of the categories of property specified in Section 32 shall be the law or custom applicable to the deceased's community or tribe, as the case may be.

124. The suit land herein was agricultural land. Further, the land being situate in West Pokot, the applicable law was Pokot customs. Under Pokot customs, the 1st Defendant was entitled to urge the case before the Committee on behalf of her deceased husband even if she had not taken out a grant of representation. The committee, relied on the customs and practices of the Pokot people that allow the next of kin of a deceased person to inherit and even defendant his/her property. That was why both the Plaintiffs and the 1st Defendant submitted to the

proceedings before the Group Ranch Committee. If, indeed, the proceedings were irregular as the Plaintiff would want the court to believe, he should not have attended the dispute resolution process before the Ranch and even relied on a document purporting to emanate from the said Committee. He cannot abate and reprobate. It is either the Committee had the mandate and ability to listen to the parties in their capacity as it did or it did not hence the Plaintiff had no business taking part in its processes. He is estopped from denying the very process he fully participated in. Had he not lost the claim before the Committee he would be the one claiming that the party with whom he was contending before the committee duly represented the deceased before the committee even without the letters of administration he claims were lacking. Luckily, the Law of Succession Act provides for such a situation regarding the Pokot agricultural lands where person die intestate.

125. The upshot of the foregoing is that the 1st defendant had *locus standi*, both by way of custom and even constitutionally under Article 159(2) of the Constitution

2010 to file the complaint before the Committee and therefore the proceedings before it was regular.

(b) Which of the decisions issued by the 2nd defendant regarding sharing of the suit land is genuine

126. One of the issues the Plaintiff presented before this court to determine was, which of the sets of the two Minutes, that is to say, P. Exhibit 4 and Exhibit 6 is genuine.

127. Given the evidence of the parties herein, particularly, PW1, PW2 and PW5 and DW1, DW3, DW4 and DW6 it is my finding that the Minutes signed by the Chairman, the Secretary and the Treasurer of the Group Ranch Committee were genuine ones.

(c) Whether the Plaintiff is the rightful owner of the suit land

128. The 1st defendant lodged a claim with the 2nd defendant, urging that she was entitled to a share of West Pokot/Chepkopegh/1, the suit land, as it was a share of his estate. Given that the merits of the same were determined conclusively by the Group Ranch Committee, it would serve no purpose to regurgitate the facts pertaining to the claim. The committee delivered the decision on 25th May 2018 and it is this decision that

resulted in the present suit. The plaintiff produced his set of proceedings of the meeting and the 1st defendant on her part produced her copies of the proceedings as well.

129. According to the Plaintiff, the committee held that the entire suit land belonged to the estate of the late Kapelingorok Ariangatom. As for the defendant, according to the proceedings she produced, the committee ruled that the suit land was to be divided equally between the plaintiff and the 1st defendant. It follows that in order to determine the issue of ownership, the court must then determine; which of the proceedings of 25th May 2018 is the genuine one.

130. In the copy of the proceedings tendered by the Plaintiff as P. Exhibit -4 there were 81 members in attendance. I observed that there was a stamp on two of the pages. However, DW3, Lokolo Lomuke, the chairman of the group ranch, stated that the stamp therein was not that of the group ranch. Additionally, the secretary, Paul Aputole, who wrote the minutes, confirmed that the plaintiff's minutes were not the ones from the meeting on that day.

131. In the copy of proceedings tendered by the 1st defendant, the same was signed by all the officials to wit; the chairman, the secretary and the treasurer. To corroborate this evidence, it was the testimony of the chairman as DW3 and the secretary, DW6, that the set of proceedings where there were 60 members present, had the decision that the land be divided equally between the plaintiff and 1st defendant. This was in line with the contents of the Defendants' copy of the group land committee meeting proceedings.

132. The upshot of the foregoing is that the prayer seeking the declaration of the plaintiff as the sole proprietor or owner of the suit land fails in its entirety.

133. Instead the court finds that the Plaintiffs are entitled only to half of the suit land while the 1st Defendant is entitled to the other half as explained above and below.

(d) Whether the counterclaim is merited.

134. The 1st Defendant raised a counterclaim by which the claimed half of the suit land for and on behalf of herself as the widow of Kemerinyang Ariangatom and her family.

135. The parties adduced evidence on this contentious issue.

First, it is worth noting that the parties concentrated more on proving which of the two sets of Minutes, P. Exhibit 4 and 6 were genuine. Of course, each of the sets proposed the ownership of the land differently, with P. Exhibit 4 giving the entire ownership to the Plaintiff's father while P. Exhibit 6 gave half to him and half to the Kemerinyang family.

136. I have found that this matter was adjudicated before the Group Ranch Committee, which fact both the Plaintiff and the Defendants acknowledge. The Committee found that it belonged to the Kapelongorok and Kemerinyang families in equal shares of two. Even that aside, this court has carefully evaluated the testimony of the witnesses herein. PW1 testified that whenever there was a dispute as to the ownership of land in the Ranch, the Committee was the one that knew who the owners of the lands were. It then gave power to the Executive of Committee of the Ranch to handle such dispute. Further that. PW2 added that, indeed, there was a dispute between his family and Chepayos Kemerinyang who claimed the land in dispute

from his family. A seven-man Committee of the Group Ranch heard the case and the members in presence of eighty-one (81) people. It arrived at a decision that the parcel of land belonged to PW2's late father Kapelingorok Ariangatom. On his part, PW5, a committee member, testified that he attended the meeting but did not sign the minutes. He termed the Minutes, P. Exhibit 6, signed by the Chairman, Secretary and Treasurer as fake. His oral testimony was that P. Exhibit 4 was the genuine one. PW6 the Assistant Chief added that he attended the dispute and that it decided that the land belonged to the Kaperingorok Ariangatom. He acknowledged that the Minutes, P. Exhibit 4 was not signed by the Chairman and Treasurer but for Exhibit No. 6 the two signed together with the Secretary.

137. PW3 and PW4 also testified that the land was owned by the Kapelongorok family.

138. All the witnesses did not however dispute the fact that at one time Kemerinyang and his family resided on the land. Further, DW1 stated that she bore some of her children on the suit land.

139. On the defence part, DW1 also stated that there were proceedings before the Committee over the dispute between her and the family of Kapelongorok. The Committee gave half of the land to her but the Kapelingorok refused to subdivide the same to her. DW2 testified as much. DW3 the Chairman of the Group Ranch testified that the Committee heard the dispute and gave a verdict. It was that the land be divided into two as between the disputing brothers. He added that he gave the parties the copies of the Minutes but Samuel (the plaintiff) went to author his own Minutes. DW4 also said that he was in the meeting of 25/05/2018 that decided that the land be divided into two as between Ariangatom and Kemrinyang families. DW6, Paul Abutole, was the Group Ranch secretary testified as much.

140. The totality of the evidence above, aside from that of the finding of the Group Ranch Committee is, in my humble view, that the suit land was owned by both Kapelongorok and Kemerinyang as brothers and therefore their families. Thus, in my final analysis and finding, the counterclaim is merited.

(e) Who to bear costs

141. Under Section 27 of the Civil Procedure Act, costs follow the event. In this matter, the event is that the Plaintiff's case has failed and the counterclaim succeeded. That would mean that the Plaintiffs are to pay costs. But law provides that in some instances the court may give a different award on costs, giving reasons for the departure. This is the apt case: the parties herein, except the 2nd Defendant, are family. Therefore, an award of costs would not be appropriate when the parties should be encouraged to head towards reconciliation. Each party is to bear their own costs.

142. In the premises, I hereby find as follows:

- 1) A declaration is hereby issued that the decision of the 2nd defendant made on 25th May 2018 and issued stating that the suit land be shared within the plaintiff and the 1st defendant is valid and genuine.**
- 2) The plaintiff's suit fails in its entirety for lack of merit and it dismissed.**
- 3) The defendants' counterclaim succeeds.**
- 4) The 1st defendant is hereby declared a beneficiary of the land parcel situated within Chepkopegh Group Ranch to wit; West Pokot/**

Chepkopegh/1 by virtue of the estate of the late Kemeringyang Ariangatom, member No. 40, and she is to be given and registered as owner of half of the said parcel of land to hold for and on behalf of her late husband's family.

- 5) As the parties are family members, each party is to bear their own costs.**

Judgment dated, signed and delivered virtually via the Teams Platform 17th December, 2025.



**HON. DR. IUR F. NYAGAKA
JUDGE**

In the presence of:

Kiarie for the Plaintiffs

Ms. Sugut for the Defendants.