



REPUBLIC OF KENYA



Cherutich (Suing as the legal representative of the Estate of Cherutich Yego) v Board of Management Hossen Secondary School (Land Case E006 of 2025) [2026] KEELC 1857 (KLR) (26 March 2026) (Judgment)

Neutral citation: [2026] KEELC 1857 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ITEN
LAND CASE E006 OF 2025
L WAITHAKA, J
MARCH 26, 2026**

BETWEEN

GRACE CHELAGAT CHERUTICH (SUING AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF CHERUTICH YEGO) PLAINTIFF

AND

BOARD OF MANAGEMENT HOSSEN SECONDARY SCHOOL ... DEFENDANT

JUDGMENT

1. By a plaint dated 2nd April 2025, the plaintiff instituted this suit seeking judgment against the defendants for: -
 - i. Eviction from the properties known as Elgeyo/Marakwet/Moiben/Kapsowar/1847 and Elgeyo/Marakwet/Moiben/Kapsowar/1850.
 - ii. Mesne profits
 - iii. Costs and interest.
2. As can be discerned from the averments/contentions contained in the plaint, the plaintiff's suit against the defendant is premised on the grounds that the parcels of land known as Elgeyo/Marakwet/Moiben/Kapsowar/1847 and Elgeyo/Marakwet/Moiben/Kapsowar/1850 (hereinafter called the suit properties) belong to the Estate of Cherutich Yego (deceased); that the defendant, (Hossen Secondary School) has forcefully trespassed onto the suit properties and caused to be arrested the deceased's children who dared resist, and constructed classrooms on the suit properties.
3. Terming the actions of the defendants complained of trespass to land, intermeddling with the Estate of a deceased person and violation of the Estate's rights to property, the plaintiff filed the instant suit seeking the reliefs listed herein above.



4. The defendants filed a statement of defence and counterclaim dated 27th May, 2025 in which they deny the allegations levelled against them and state/contend that the suit properties were acquired through an exchange programme where the family of the deceased led by the deceased's wife, Zipporah T. Cherutich, donated 3 acres of land comprised in the suit properties in exchange for 5 acres of land in Milimani Settlement Scheme in Trans Nzoia; that they (the defendants) took possession of the suit properties in 2006, fenced the 3 acres and constructed classrooms, dormitories, laboratories, staff houses and a cowshed in their portion of the suit property pursuant to the exchange programme.
5. Terming the plaintiff's suit time barred, defective and an abuse of the process of the court, the defendants urge this court to dismiss the plaintiff's suit with costs to them.
6. By way of counterclaim, the defendant reiterates its claim that it acquired the suit properties through exchange of three (3) acres of land comprised in the suit property with another parcel of land that was offered to the community by the Government of Kenya.
7. Explaining that it is on the suit properties pursuant to the exchange of land programme entered into between the plaintiff's family and itself, the defendant states that despite the plaintiff's family having got land pursuant to the exchange programme/agreement, the family did not fulfil its part of the bargain by transferring the three (3) acres to it.
8. The defendant further explains that it has been in possession of the suit properties for over 39 years and that its use and enjoyment of the suit properties has been peaceful, without any complaint or disturbance from the plaintiff or the plaintiff's family.
9. In the counterclaim, the defendant seeks judgment against the plaintiff, in the main suit, for: -
 - a. A declaration that the defendant now plaintiff is the owner of 3 acres of land to be excised from parcel No. Elgeyo/Marakwet/Moiben/Kapsowar/1847 and Elgeyo/Marakwet/Moiben/Kapsowar/1850;
 - b. An order that 3 acres be excised from land parcels numbers Elgeyo/ Marakwet /Moiben / Kapsowar/1847 and 1850 and the same be registered and transferred to the defendant/plaintiff in the counterclaim;
 - c. An order of permanent injunction against the defendant or her agents or other beneficiaries of the Estate from interfering or intermeddling with the peaceful ownership and possession of the 3 acres by the plaintiff;
 - d. General damages;
 - e. Costs of the suit and interest.
10. The plaintiff filed a reply to defence and a defence to counterclaim, dated 5th June 2025, in which she reiterates the averments in her plaint and regarding the defendant claim or contention that the suit properties were exchanged with another parcel of land by the plaintiff's family, contends that the procedure of compulsory acquisition was never complied with; that neither Cherutich Yego, deceased, nor his wife, Zipporah Toiyoi Cherutich ever donated the suit properties to the defendant and that Zipporah Toiyoi Cherutich did not exchange the suit properties with any other alleged property as she could not give what she did not have.
11. Contending that the defendant's actions amount to deprivation of the Estate of Cherutich Yego of its properties contrary to the provisions of Article 40(3) of *the Constitution*, the plaintiff maintains that



the defendant's actions complained about are unlawful and illegal and urges this court to dismiss the defendant's defence and counterclaim with costs to her.

12. When the suit came up for hearing, the parties led evidence in support of their pleaded cases and at close of hearing the plaintiff filed submissions on 19th December 2025 and the defendant filed theirs on even date which I have read and considered.
13. A review of the evidence adduced by the defendant's witnesses namely Moses Kandie (DW1), Daniel Chelegei (DW2), Paul Kipsang (DW3), Sylvester Chepkonga (DW5) and Charles Kurui (DW6) shows that the defendant entered into the suit properties in 2006; that the entry of the defendant into the suit properties was with the permission of some of the beneficiaries of the Estate of Cherutich Yego and that the defendant has massively effected development on 2.5 acres of the suit properties which it occupies.
14. The circumstances upon which the defendant entered into the suit properties are that some of the beneficiaries of the Estate of the Cherutich family, led by Cherutich's wife Zipporah Cherutich, agreed to give to the defendant 3 acres comprised in the suit properties for expansion of the defendant's school. That fact is borne out in the evidence of DW1, DW2, DW3, DW5 and DW-6. For purposes of this judgment I will reproduce the testimony of DW5 before court, which is as follows:-

“My name is Sylvester Chepkonga. ...I was called as a witness by Hossen Secondary School.

I recorded and signed a witness statement on 18th September 2025. I urge the Court to adopt it as my evidence in chief....

The land occupied by the school was exchanged with land given to the school by Government with land owned by the family of Cherutich Yego which was next to the School. The family agreed to donate 3 acres in exchange of 5 acres in Trans Nzoia.

The family of Yego was represented by their mother Zipporah Toyoi Cherutich and her 3 sons.

There was a meeting held and Zipporah Yego and 1 son signed the letter dated 24th March 1995 (Dexbt 5).

At this time the secondary school had not been established. It was established in 2005.

As PTA chairman, I also signed the letter.

Before the exchange, the family of Cherutich Yego was utilizing the 3 acres given to the School.

By the time the school started, some of the family members were living next to the school but outside the area where the school is built, particularly the daughters-Salina and Grace Cherutich. They are there to date.

By this time the widow, Zipporah was deceased. She was buried in the school land because as per our customs, a person is buried where they live. Her late husband is also buried in the school land.

The sons of Zipporah vacated the land after the exchange. Only Zipporah remained on the land until her death.

The family of Cherutich still utilizes the land they were given in Trans Nzoia to date.”



15. In cross examination, DW5 stated as follows:-

“Hossen Secondary School did not have land in Uasin Gishu. The family of Cherutich Yego were given land in Uasin Gishu. I have not seen any document. I do not know whether they were given by SFT on loan...Dexbt 5 was authored by Charles Kurui. He was the secretary for the day.

From the family of Cherutich Yego, Zipporah, Joseph Joel and Moses attended. ...the names in Pexbt 13(c) and the name captured as Moses Cherutich in Dexbt 5 are different.

In Dexbt 5 Moses Cherutich and Zipporah Cherutich did not sign.

It is true that Zipporah continued living on the school land after the exchange until her death.

Hossen Secondary School started off in the Primary Section.

Before the Secondary school moved to the impugned land, a survey was not done. We only showed the school the boundaries as we knew them using the fence we had erected.

No succession has been done for the Estate of Cherutich Yego”.

16. In re-examination, DW5 stated as follows: -

“The school was fenced in 2005.

Before her death, Zipporah never gave an indication that the land should never be given to the school.

Her family members who moved out after the exchange did so voluntarily.”

17. The letter dated 24th March 1995 (Dexbt 5) referred to during the hearing was from the Assistant Chief Kipsaiya Sub-location and was addressed to the District Commissioner Marakwet District. Its contents are as follows: -

“ ...

Re: Allocation For Needy (landless People)

On a meeting held on 23/3/1995, chaired by the area Assistant Chief, Mr. Johnstone Cheptoo and attended by the entire residents of the sub location, the Assistant Chief informed the residents that there were four chances (4 plots) of 5 acres each to be allocated the land in Milimani Complex in Tranz Nzoia District.

The attendance agreed unanimously to elect one person from each school community through secret voting....

Hossen parents did not vote but agreed that the plot be given to a person near the school who will give his/her plot (land) to school for expansion. The parents reached this conclusion because the school has a very small area.

One person who voluntarily agreed to give the school shamba is the family of Cherutich Yego (who is deceased) led by the Widow Mrs. Zipporah Toyoi Cherutich of ID No.4503626/67 with her sons:

i. Mr. Joseph Cherutich-signed, Left Thumb Print;



- ii. Mr. Joel Cherutich-signed
- iii. Mr. Moses Cherutich-signed.

This was witnessed by the following:-

- 1. The Area Assistant Chief-Johnstone Cheptoo-signed
- 2. The headmaster of the school-Jacob Maina signed.
- 3. The school chairman (school committee)-Daniel Chelegei-signed.
- 4. The school Treasurer-Charles Kurui-signed
- 5. The PTA Chairman-Sylvester Chepkonga-signed.

and the people who attended the Baraza numbering about 642 people.

The land to be given to the school are plots Moiben/Kapsowar-1847 and Moiben/Kapsowar 1850 in the name of Cherutich Yego.

The total land to be given to the school is 1.2 ha or 3 acres.”

- 18. The letter (Dexbt 5) was copied to the Senior Chief, Koibarak Location; the D.O Northern Division Chebiemit; the Headteacher Hossen School and Mrs. Zipporah T. Cheruiyot.
- 19. The totality of the evidence adduced in this case shows that pursuant to the agreement for exchange of land entered into between the family of Cherutich Yego (deceased) and the parents/community of Hossen Secondary School, the family of Cherutich Yego, through Cherutich Yego’s wife Zipporah T. Cherutich, was allocated by the Government of Kenya, through Settlement Fund Trustees 5 acres of land in Milimani Settlement Scheme in Trans Nzoia.
- 20. Whilst in her evidence the plaintiff attempted to delink the acquisition of the land in Milimani Settlement Scheme to the agreement or arrangement that existed between her family, represented by her Mother Zipporah T. Cherutich (now deceased), upon evaluation of the totality of the evidence adduced in this case by the parties, I find and hold that the allocation of the land in Milimani Settlement Scheme in Trans Nzoia, to wit plot No. 401 measuring 5 acres by the Government of Kenya, through Settlement Fund Trustees to the plaintiff’s mother, was on account of the agreement or arrangement that existed between the Board of Management Hossen Secondary School and the plaintiff’s family. My above finding is informed by the following factors among others: -
 - i. The evidence of existence of the agreement between the School and the family of Cherutich Yego was not shaken or controverted by the plaintiff;
 - ii. There is no evidence that the plaintiff’s mother, independently applied for land in Milimani Settlement Scheme in Trans Nzoia;
 - iii. The letter of allotment issued to the plaintiff’s mother, Zipporah T. Cherutich is expressed to be through the DC Marakwet, the same institution addressed in the letter produced by the defendant in evidence as Dexbt 5;
 - iv. The conduct of the parties shows that the School was indeed given possession of the suit properties pursuant to the arrangement and neither the plaintiff nor the plaintiff’s family



raised any objection when the school took possession of the three acres exchanged and began developing it.

21. Although the evidence adduced shows that the defendant was given possession of the suit properties pursuant to the agreement for exchange of land entered into between the plaintiff's family and the defendant, an issue of law arises concerning that arrangement namely; as at the time the arrangement was entered into, the suit properties belonged to the Estate of Cherutich Yego (deceased) which Estate had not been administered and remains un administered to date.
22. That state of affairs brings into question the regularity/ legality of the agreement pursuant to which the defendant took possession of the suit properties.
23. There being evidence that at the time portions of the suit properties were exchanged with land elsewhere by some of the beneficiaries of the Estate of Cherutich Yego, the Estate of Cherutich Yego had not been administered in accordance with the applicable law and procedures, that act of exchange with another parcel of land by persons who had not been appointed as administrators of the Estate of Cherutich Yego (deceased) amounted to intermeddling with the Estate which the law and in particular Section 45(1) of the Law of Succession Act abhors/prohibits. In that regard, see the said provision of law which provides as follows:-

“ Except so far as expressly authorized by this Act or by any other written law or by a grant of representation under this Act, no person shall, for any purpose, take possession or dispose of or otherwise intermeddle with any free property of a deceased person.”
24. Under Section 45(2) of the Law of Succession Act, it is an offence to intermeddle with the free Estate of a deceased person.
25. Based on the evidence adduced in this case showing that the Estate of Cherutich Yego was not administered when his family members purportedly exchanged part of the land belonging to that Estate and on the above cited section of the law and decided authorities in respect thereof cited by the counsel for the plaintiff in the plaintiff's submissions (Estate of Isaac Kaburu Marete (deceased) (2017) eKLR and Re Estate of Paul M' Maria (deceased) (2017) eKLR), I find and hold that the arrangement entered into between the defendant and the plaintiff's family members pursuant to which the defendant entered into the suit properties is tainted by illegality and as such is ordinarily incapable of affording the defendant any legal protection. That said, I hasten to point out that the beneficiaries of the Estate of Cherutich Yego, the plaintiff included, conducted themselves in a manner to suggest that they would honour their promise to transfer their beneficial interest in the suit properties to the defendant, upon administration of the Estate of the deceased thereby leading to change of circumstances and position of the parties. The plaintiff's family got land in Milimani Settlement Scheme in Trans Nzoia which land is to date registered in the name of the plaintiff's mother and is being used by the plaintiff. The defendant, on the other hand, took possession of the 3 acres promised and has put up a school therein, which school is serving public interest.
26. Even though equity ordinarily follows the law, and would in the circumstances of this case call for vitiating the arrangement entered into the parties for want of capacity to enter into them or for failed consideration on the part of the plaintiff's family, in the special circumstances of this case, I find and hold that it would be inequitable to invalidate the transaction entered into between the plaintiff's family and the defendant leading to fundamental changes in the positions of the parties.
27. The upshot of the foregoing is that the plaintiff has not made up a case for being granted the orders sought, namely eviction of the defendant from the portions of the suit properties it occupies, award of mesne profits and costs of the suit.



28. As to whether the defendant has made up a case for being granted the order sought in the counterclaim, despite having determined that the defendant's use and possession of the suit properties is premised on a process that is on the face of it illegal on account of the conduct of the parties to this suit, which conduct was acted upon to the detriment of the parties and further on account of the fact that it's in public interest to ensure that the defendant school continues operating in the suit properties without interruption from the plaintiff or any other person laying claim to the Estate of Cherutich Yego, I grant an injunction restraining the plaintiff by herself and/or any other person laying claiming/interest in the Estate of Cherutich Yego (deceased) pending the administration of the Estate of the said Cherutich Yego by the plaintiff or any other person interested in the administration of the Estate.
29. Upon administration of the Estate of the Cherutich Yego comprised in the suit properties and the Estate of Zipporah T. Cherutich comprised in plot No. 401, Milimani Settlement Scheme in Trans Nzoia, which Estate, I have determined was exchanged with the suit properties herein, the parties shall be at liberty to move the court for appropriate orders or reliefs.
30. On costs, I order that parties bear their own costs of the suit.
31. Orders accordingly.

JUDGMENT DATED, SIGNED AND DELIVERED VIRTUALLY AT BUSIA THIS 26TH DAY OF MARCH, 2026.

L. N. WAITHAKA

JUDGE

In the presence of;

Mr Mukhabane for the Plaintiff

N/A for the Defendant

Court Assistant; Tracy

