



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA AT ELDORET

E & L CASE NO. 530 OF 2012

(FORMERLY ELDORET HCCC NO. 105 OF 2009)

**DANSON K. CHEBOI.....1ST
PLAINTIFF**

**JOHN CHEPKURUI KIBOR.....2ND
PLAINTIFF**

**SAMWEL K. CHEMWENO.....3RD
PLAINTIFF**

**SIMON SUTER CHESANG.....4TH
PLAINTIFF**

**DAVID K. KANDA.....5TH
PLAINTIFF**

WILSON T. CHEBOI (Suing on their own behalf and

in representative’s capacity on behalf of KAPTOBON CLAN

members numbering at lease 84).....6TH PLAINTIFF

VERSUS

**CHESANG KIPTALAI.....1ST
DEFENDANT**

**EDWARD CHESANG.....2ND
DEFENDANT**

**JONATHAN C. BIWOTT.....3RD
DEFENDANT**

**KIPRONO JAMES.....4TH
DEFENDANT**

**JULIUS RUTTO.....5TH
DEFENDANT**

WILLIAM TOROITICH CHEPKONGA.....	6TH
DEFENDANT	
KIPKORIR EDWARD.....	7TH
DEFENDANT	
THOMAS KIPKORE.....	8TH
DEFENDANT	
JAMES YANO KIPTALA.....	9TH
DEFENDANT	
EDWIN CHEPKURUI KANDA.....	10TH
DEFENDANT	
RICHARD CHEPKONGA.....	11TH
DEFENDANT	

RULING

Danson K. Cheboi, John Chepkurui Kibor, Samwel K. Chemweno, Simon Suter Chesang, David K. Kanda and Wilson T. Cheboi, suing on their own behalf and in representative’s capacity on behalf of Kaptobon Clan members numbering at least 84, have sued Chesang Kiptalai, Edward Chesang, Jonathan C. Biwott, Kiprono James, Christopher Toroitich, Kiprono Edwin, Julius Rutto, William Toroitich Chepkonga, Kipkorir Edward, Thomas Kipkore, James Yano Kiptala, Edwin Chepkurui Kand, and Richard Chepkonga in a matter of long standing dispute between Kaptobon and Kapkira clan.

The plaintiffs claim that the court, in case number Eldoret Senior Resident Magistrates Land Case No. 62 of 1986 between Kipsaiya clan as the plaintiff and Kaptobon clan as the then defendant, read the award of the parcel of Elders and informed the parties of their right of objection. In Eldoret High Court Civil Appeal NO. 3 of 1987 between Kaptobon clan as appellant and Kipsaiya clan as the respondent, the Honourable Justice Aganyanya dismissed the appeal with costs.

The plaintiffs’ content is that the defendants have been using this award of Elders and the decision of the Magistrate’s Court and the High Court to claim different parcels of land and yet Award only relate to Kapkira land.

The plaintiffs seek an order of declaration that the Keiyo Marakwet District Northern Division, panel of Elders Award dated 21.8.1986, the Eldoret SRMCC Land Case No. 62 of 1986 and Eldoret Hcc Appeal No. 3 of 1987 relate to a small disputed area namely the Kapkira land and has nothing to do with the plaintiffs’ land.

The plaintiffs further pray for an order that the Keiyo Marakwet District Northern division panel of Elders proceedings and award dated 21.8.1986 together with proceedings, judgment, Decree or orders in both Eldoret SRMCC Land Case No. 62 of 1986 and Eldoret Hccc No. 3 of 1987 are null and void ab initio.

Last but not lease, that the dispute over parcels of land namely Kiborok land, Cherelabei land, Kapmigandi land and Kipkira land between Kaptobon clan and Kipsaiya clans be referred for arbitration.

The defendants have raised a preliminary objection that this court lacks jurisdiction to hear the suit as the issues in the suit are res-judicata and that the suit is an abuse of the process of the court.

I have considered the submissions by the defendant and evidence on record and do find that on 30.7.1987, the High Court of Kenya exercising its appellate jurisdiction in Civil Appeal No. 3 of 1987 dismissed the appeal by Kaptobon clan over a piece of land that was awarded by Elders to Kipsaiya clan.

The Kaptobon clan had applied to have the elders award set aside by the Resident Magistrate's Court at Eldoret but the court dismissed the application.

I have discerned the preliminary objection and rival submissions and do find that the issues raised by the plaintiff in this suit and in Eldoret SRMCC Land Case No. 62 of 1986 and Eldoret Hcc Appeal No. 3 of 1987 are identical thus the setting aside of the Keiyo Marakwet District Northern Division Panel of Elders' decision dated 21.8.1986, Eldoret SRMCC Land Case No. 62 of 1986 and Eldoret High Court Civil Appeal No. 3 of 1987. In fact, the plaintiff seeks to nullify all proceedings in relation to the disputed land and referring the matter for arbitration.

I do find that the parties are the same thus Kaptobon clan and Kipsaiya clan save that the names of the clan members have been added, however, this does not change the principle of res-judicata.

On concurrent jurisdiction, I do find that the High Court as at 1987 had jurisdiction to entertain the dispute before it then. The Environment & Land Courts had not been established. Moreover, when the suit herein was filed, the Environment and Land Court had not been established. I do find that this court has concurrent jurisdiction with the High Court as at 30.7.1987 when the High Court delivered its decision on this matter. Lastly, there was finality on the decision of the High Court when it declared to refer the matter back to the panel of elders.

In conclusion, I do find that the proceedings herein are in relation to a matter that has been determined by the court of competent jurisdiction between same parties on the same issues and therefore, are res-judicata and an abuse of the process of the court. The preliminary objection is upheld and therefore the suit is struck out with costs.

DATED AND DELIVERED AT ELDORET THIS 29TH DAY OF SEPTEMBER, 2017.

A. OMBWAYO

JUDGE