



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT OF KENYA AT ELDORET**

**ENVIRONMENT & LAND CASE NO. 268 OF 2014**

**PHILEMON KIPKOSGEI .....1ST PLAINTIFF**

**RICHARD KIMAIYO KIYENG .....2ND PLAINTIFF**

**BERNARD KIYENG MUTWOL.....3RD PLAINTIFF**

*(Suing as Personal Representatives of the Estate*

*of Chepkियeng Katam ...Deceased)*

**VERSUS**

**MARAKWET TEACHERS HOUSING**

**CO-OPERATIVE SOCIETY LIMITED ..... DEFENDANT**

**J U D G M E N T**

Philemon Kipkosgei Kiyeng, Richard Kimayo Kiyeng and Bernard Kiyeng Mutwol suing as representatives of the Estate of Chepkियeng Katam (Deceased) hereinafter referred to as Plaintiffs have brought this matter against Marakwet Teachers Housing Co-operative Society Ltd hereinafter referred to as the Defendant claiming that the registered land Title No. Moiben/Kapsowor/67 approximate area 2.0 hectares was on 29/3/1977 registered in the name of Chepkियeng Katam who died in 1981 at Kapsowar

The defendant has all along dealt in whatever manner with the Plaintiffs' parcel of land-MOIBEN/KAPSOWAR/67-contrary to and in breach of the law of Succession Act, the Land Registration Act and other relevant Laws of the land under which the Plaintiffs' registered land among other assets of and the entire estate of Chepkियeng Katam deceased is protected.

The Plaintiffs have been opposing the allocation, sale, and other forms of disposal of the registered land title No.MOIBEN/KAPSOWOR/67 to and developments, cultivation or other uses of the suit land by third parties including the defendant contrary to and it breach of the law.

The Plaintiffs state that corrupt, dictatorial and oppressive means have always been used by third parties including the defendant to disrupt agricultural activities and intermeddle with the estate of Chepkियeng Katam deceased contrary to and in violation with the laws of the land.

Third parties including the defendant have denied the plaintiffs the right and opportunity to follow the Laws of the land to either administer and distribute the estate, convert the registered land title No. MOIBEN/KAPSOWAR/67 from agricultural land to commercial land or to dispose of the said land on willing seller and willing buyer basis and in accordance with the Law.

The Plaintiffs stated that the process of transfer, registration, title deeds to and settlement of the beneficiaries, planning and developments in respect of the parcel of land MOIBEN/KAPSOWAR/67 the only private and agricultural land for the estate beneficiaries and families including children have been blocked by third parties including the defendant.

The Plaintiffs also averred that the Government at the two levels and private developers including big investors or entities among other third parties including the defendant have been interested in the Plaintiffs' registered land title No. MOIBEN/KAPSOWAR/67 but the laws of the land on private land and estate of a deceased person must be followed accordingly.

The Plaintiffs' letter dated 22/9/1989 on the objections of the Plaintiffs in respect of the plaintiffs' parcel of land MOIBEN/KAPSOWAR/67 has not been relied upon by the Government at the County and National Levels ever since 1987 to date.

On 17/6/2010 and 17/2/2014 respectively the plaintiffs obtained certificates of official search of the registered land title No. MOIBEN/KAPSOWAR/67 and found out that the registered proprietor is still Chepkuyeng Katam deceased and there was a restriction to the effect that “ALL LAND HAS BEEN ACQUIRED BY GOVERNMENT FOR KAPSOWAR DIVISIONAL HQS-D.O's LETTER NO. CHEB/CON/16/1/VOL.1/11 of 16/1/1989” and/or “ACQUIRED BY THE GOVERNMENT FOR KAPSOWAR DIVISIONAL H/QUARTERS” respectively.

The plaintiffs averred that the registered land title No. MOIBEN/KAPSOWAR/67 has not been acquired by the Government for Kapsowar divisional headquarters or any other purpose and that the plaintiffs have not been served with the District Officer's letter No. CHEB/CON/16/1/VOL.1/11 of 16/1/1989 as stated in the certificates of official search. The relevant Land Control Board in the county of Elgeyo Marakwet at Iten on 18/6/2014 refused, blocked or cancelled to approve the plaintiffs' application for consent of the land control after the plaintiffs obtained grant of letters of administration and certificate of confirmation of grant dated 26/5/2014 on the administration and distribution of the registered land title No. MOIBEN/KAPSOWAR/67 as per the inventory and as ordered by the High Court at Eldoret.

The plaintiffs averred that the defendant in a letter dated 20/9/2010 acknowledge the plaintiffs' letter dated 14/9/2010 and partially complied with such letter by making some payments to the plaintiffs before the defendant defaulted by refusing, neglecting, ignoring, failing or defaulting to honour the plaintiffs' letter dated 14/9/2010 and letter of reminder dated 30/10/2013 ever since 2010 to date. The Plaintiffs pray for an order of eviction of the defendant from the suit land Moiben Kapsowar/67 plus costs and interest. The defendant was served but never entered appearance and did not file defence.

When the matter came up for hearing, Richard Kimaiyo Kiyeng testified that he knew the defendant who is occupying the land of Chepkuyeng Katam illegally. He produced a certificate of official search in respect of E.M/KAPSOWAR/67 dated 19/1/2012 that shows that the property is registered in the name of Chepkuyeng Katam herein being duly registered as proprietor. The certificates of official search dated 17/6/2014 shows that all land No. EM/KAPSOWAR/67 has been acquired by the Government of Kenya for Kapsowar Divisional Headquarters. This is the D.O's letter No. CHEB/CON/16/I/VOL.I/II of 16.1.1989 to the effect that the land was compulsorily acquired.

The Plaintiff produced the certificate of confirmation of grant dated at Eldoret the 26th of May, 2014 with a schedule of distribution of the property thus the 1st Plaintiff to receive 2.4 Acres, the 2nd Plaintiff to receive 2.4 Acres whereas the 3rd Plaintiff to receive 0.1 Acres.

I have considered the pleadings and evidence on record and do find that though the suit is not defended by the defendant, there is an element of the disputed parcel of land having been acquired by the Government of Kenya in 1989 as there is a restriction to the effect that “all land has been acquired by government for kapsowar divisional hqs-d.o's letter no. cheb/con/16/1/vol.1/11 of 16/1/1989” and/or “acquired by the government for kapsowar divisional h/quarters”. The Attorney General has not been enjoined as a party. The Plaintiff has not come clear on this issue. Moreover, the title deed in respect to the property has not been produced by the Plaintiffs. On that basis, I do find that the plaintiff has not proved his case on

balance of probabilities and therefore do decline to give the prayers sought. The suit is dismissed with no orders as to costs.

**DATED AND DELIVERED AT ELDORET THIS 17TH DAY OF AUGUST, 2016**

**ANTONY OMBWAYO**

**JUDGE**