



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**

**AT MERU**

**CIVIL SUIT NO 5 OF 2008**

**ALEXANDER THURANIRA KAMINCHIA.....PLAINTIFF**

**-VERSUS-**

**JOHN MURUNGI.....1ST DEFENDANT**

**JOSHUA MWITARI.....2ND DEFENDANT**

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

1. In his Complaint, the Plaintiff prays for Judgment against the Defendants, jointly and severally for:-

*a. An Order of Eviction and permanent Injunction to restrain the Defendants, their servants or agents from entering the Plaintiff's parcel of Land No. L.R NTIRIMITI SETTLEMENT SCHEME/303.*

*b. Costs and interest of the suit.*

2. The Court notes that despite being properly served at least twice, the defendants failed or refused to come to Court. The date this suit was heard, that is 12th May, 2016 was properly served upon the Defendants. Indeed the assistant Chief for the area where the land is situated, Mr. Japhet Muriithi Kiambati, testified that the Defendants were served with the date for the hearing of the suit in his presence.

3. PW1 testified that he knew John Muriungi, the first Defendant and that the other 2 defendants were his sons. He asked the Court to adopt his witness statement as his evidence. He said that he properly bought the suit land and had a title to it. He produced the title which was in a bundle marked Plaintiff's exhibits 1 to 3.

4. He prayed that the Court assists him to evict the Defendants from his land. He also prayed for costs.

5. PW 2 told the Court that his name was Samson Kimaita M' Ambutu, a retired Assistant Director of intelligence who retired in 2004. He told the Court that he had signed his witness statement on 10/6/2013. He asked the Court to adopt it as his evidence.

6. In his statement, PW 2 told the Court that he was the registered owner of Plot No. 326 Ntirimiti Settlement Scheme. He said that the Plaintiff was his neighbour and owned plot no. 303, Ntirimiti Settlement Scheme. He averred that he bought his land from one Gichuru.

7. He testified that after he bought the land from Mr. Gichuru he found that Mr. John Muriungi, the 1st Defendant had occupied his land illegally. He threatened to burn his houses and to kill his livestock. He went to Mr. Gichuru who had sold the land to him and complained about the threats and the occupation of his land. It is then that the 1st Defendant moved to Plot No. 303, Ntirimiti Scheme, which belongs to the Plaintiff.

8. I note that in his witness statement, the Plaintiff says that he became registered owner of L.R NTIRIMITI SETTLEMENT SCHEME/303 in the year 1991. He avers that he had an indefeasible title. However, in the Year, 2007, he was informed that the 1st Defendant had invaded his land. He sought assistance of the area Administration to have the 1st Defendant removed from his land. He was not successful. He even wrote the 1st defendant a demand notice.

9. The 1st Plaintiff, in his witness statement, says that he is surprised and shocked by the falsehood manufactured by the defendants who claim to have occupied his land since 1984.

10. I have carefully considered the pleadings proffered by the parties including the Plaintiff, the 1st, 2nd and 3rd Defendants defence and Counterclaim and the Affidavits filed by the Parties. I have also carefully considered the oral evidence given by the Plaintiff and his one witness. I have also taken into account the confirmation by the Sub-Chief for the area where the land is situated that the defendants were served with the hearing date in his presence.

11. I find that the Plaintiff has proved his case on a balance of probability. His assertions are credible. The Defendants assertions lack integrity. As a result, I issue the following orders:-

***1. An order of eviction is granted to evict the defendants from land parcel No. NTIRIMITI SETTLEMENT SCHEME/303***

***2. A permanent Injunction is granted to restrain the Defendants, their servants or agents from entering the Plaintiffs parcel of Land No. NTIRIMITI SETTLEMENT SCHEME/303.***

***3. The O.C.S, Subuiga Police Station is ordered to assist in the implementation of orders 1 and 2 above.***

***4. Costs are awarded to the Plaintiff.***

**It is so ordered.**

**DELIVERED IN OPEN COURT AT MERU THIS 19TH DAY OF MAY, 2016 IN THE PRESENCE OF:-**

CC: Lilian/Daniel

Muthamia present for the Plaintiff

**P.M. NJOROGI**

**JUDGE**