



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT KERUGOYA**  
**ELC CASE NO. 675 OF 2013**

JOSEPH NGARI NTHIA .....PLAINTIFF

VERSUS

JOHN NGARI MUCUNGU .....DEFENDANT

**JUDGMENT**

By his plaint filed herein on 27<sup>th</sup> August 2009, the plaintiff suing as the registered proprietor of the parcel of land known as L.R No. MBEERE/MBITA 987 (hereinafter the suit land) sought orders to evict the defendant from the said suit land on the basis that he has entered the same and is committing acts of waste thereon and has refused to vacate despite written demand.

Though served with plaint and summons on 3<sup>rd</sup> September 2009, the plaintiff neither entered appearance nor filed defence and interlocutory judgment was accordingly entered against him on 11<sup>th</sup> July 2014 and the matter came up for formal proof on 30<sup>th</sup> July 2014 when the plaintiff testified in support of his claim and called one witness.

The plaintiff's case is that he bought the suit land on 19<sup>th</sup> August 2007 for Ksh. 227.500/= from ELIZAPHAN NYAGA KARANJA (PW2) and following the usual Land Control Board Consent, the suit land was transferred to him. He produced the sale agreement (Exhibit 1) and the Title deed (Exhibit 2). When he bought the land, the defendant was living on it but agreed to vacate. However, to-date, the defendant has failed to vacate notwithstanding a notice issued to him (Exhibit 3) and even having agreed to do so in an agreement that he signed before the Assistant Chief (Exhibit 4). That gave rise to this suit.

The plaintiff's witness ELIZAPHAN KARANJA (PW2) confirmed that indeed he sold the suit land to plaintiff in 2007 and that the defendant who was then cultivating on it agreed that he would vacate later.

As indicated earlier, the defendant did not enter appearance nor file any defence and so the evidence of the plaintiff and his witness is un-controverted. From that evidence, it is not in dispute that the plaintiff is the registered proprietor of the suit land as demonstrated by the title deed (Exhibit 2) issued under the now repealed **Registered Land Act**. As the registered proprietor, the plaintiff enjoys the right and privileges that go with such registration including the right to eject trespassers. There is no evidence to suggest that the defendant has any right recognized in law to continue being on the suit land. If anything, there is an agreement (Exhibit 5) signed by the defendant on 28<sup>th</sup> July 2008 at the office of the Assistant Chief Gikiiro Sub-location in which he undertook to vacate the suit land by 29<sup>th</sup> November 2008. Clearly, he has failed to keep that part of the agreement.

Believing that plaintiff's un-controverted evidence as I hereby do, I have no hesitation in finding

that he has established his case as required in law.

I therefore enter judgment for the plaintiff as prayed in his plaint together with costs.

**B.N. OLAO**

**JUDGE**

**25<sup>TH</sup> SEPTEMBER, 2014**

25/9/2014

Before

B.N. Olao – Judge

Mwangi – CC

Plaintiff - present

Defendant – absent

COURT: Judgment delivered this 25<sup>th</sup> day of September, 2014 in open Court.

Plaintiff present

Defendant absent.

Right of appeal explained.

**B.N. OLAO**

**JUDGE**

**25<sup>TH</sup> SEPTEMBER, 2014**