



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

**ELC CASE NO. 19 OF 2013**

SUSAN WANGUI MWANGI ..... PLAINTIFF

VERSUS

HARRISON NJIRU ..... DEFENDANT

**JUDGMENT**

By her plaint filed herein on 9<sup>th</sup> November 2012, the plaintiff sought the following orders against the defendant:-

- a. ***That an order do issue to evict the defendant from land parcel No. EVURORE/NTHAMBU/949 plus mesne profits.***
- b. ***Costs of the suit***
- c. ***Interest***

It is the plaintiff's case that she is the registered owner of the land parcel known as L.R EVURORE/NTHAMBU/949 (hereinafter referred to as the suit land) and that although she had allowed the defendant to cultivate a portion of the same so as to guard it against trespassers, the licence to do so was cancelled by plaintiff in 2010 but defendant has refused to vacate and continues to trespass on the suit land hence this case.

The defendant did not enter appearance nor file defence and interlocutory judgment was entered against him sometime in May 2013 (the date is not clear). This matter first came up before me for formal proof on 29<sup>th</sup> August 2013 and again on 18<sup>th</sup> September 2013 but I insisted on proper service upon the defendant this being a land case. On 25<sup>th</sup> November 2013, formal proof proceeded before me having been satisfied about the service upon defendant.

In her evidence, the plaintiff testified that she is the registered owner of the suit land and produced the Title Deed of the same (Exhibit 1). She told the Court that in 2004, she allowed the defendant to cultivate it but cancelled that licence in 2010 yet the defendant has refused to vacate from the same and has instead stated that the land was given to him by some Kikuyu person. Plaintiff reported the matter to the Chief and area Provincial Administration but defendant has refused to vacate even after a notice (Exhibit 2) was issued by the plaintiff's lawyer. That gave rise to this suit.

I have considered the plaintiff's case, un-controverted as it is. It is clear from the Title Deed that she is the registered owner of the suit land since 11<sup>th</sup> November 1993 when the Title Deed was issued. The same was issued under the now repealed ***Registered Land Act*** and under ***Section 27 of the said Act***, such registration vests in her the absolute ownership of the suit land. There is therefore no reason why the defendant should continue trespassing on the plaintiff's land and no defence has

been filed to challenge plaintiff's ownership of the suit land. The order for eviction is therefore well merited and I grant it.

With regard to the order for mesne profits, it is clear from the pleadings and evidence herein that the plaintiff allowed defendant to cultivate the land and although she says she later gave him a notice to vacate, no such notice was placed before me. Mesne profits are defined in **BLACK'S LAW DICTIONARY 9<sup>th</sup> Edition** as follows:-

***“The profits of an estate received by a tenant in wrongful possession between two dates—“***

From the evidence herein including the demand letter to defendant (Exhibit 2), it is clear that defendant's occupation of the suit land has been with the consent of the plaintiff and since no evidence has been placed before me as to when the permission was cancelled, it would be difficult for me to assess the mesne profits available to plaintiff and therefore I am un-able to award the same.

Judgment is therefore entered for the plaintiff against the defendant as follows:-

- a. ***An order that the defendant be evicted from the suit land forthwith***
- b. ***No order as to costs.***

**B.N. OLAO**

**JUDGE**

**25<sup>TH</sup> NOVEMBER, 2013**

Judgment delivered in open Court this 25<sup>th</sup> day of November 2013.

Plaintiff present

Mr. Muraguri for plaintiff present

Defendant absent

Mr. Muriithi Court clerk present

Right of appeal explained.

**B.N. OLAO**

**JUDGE**

**25<sup>TH</sup> NOVEMBER, 2013**