

THE HIGH COURT OF KENYA

AT NAKURU

CIVIL SUIT NO.260 OF 2011

MEMUSI ENE PESI.....APPLICANT/PLAINTIFF

VERSUS

SONTE OLE PESI.....RESPONDENT/DEFENDANT

RULING

The applicant has annexed to her affidavit sworn in support of the motion dated 23rd September, 2011, a certified photo copy of a title deed in respect of CIS MARA/ROTIAN/35 which is registered in her name. The applicant has explained that she inherited the suit property from her late husband, Itei Ole Pesi. The late Ole Pesi had a first wife who predeceased him. The first wife had a daughter who is the mother of the respondent.

Because the respondent was born out of wedlock, he was not welcome by his mother's husband. He was brought up by the applicant until he turned ten (10) years or thereabout when he joined his mother. In 2009, the respondent approached the applicant to assist him with land for subsistence farming because of the bad blood between him and his step father. The applicant obliged and gave him one acre of the suit property. He made another request and a further one acre was granted.

In February, 2010, the respondent descended on the property and embarked on wanton cutting down of trees and proceeded to put up a semi-permanent house on the portions earlier given to him. The respondent also destroyed a fence on the suit property. He has not heeded the warning of the local chief.

Despite service with the application and with a hearing notice, the respondent did not respond or attend court when the application came up for *inter partes* hearing.

The applicant has demonstrated that she is the registered owner of the suit property by exhibiting the title deed and the certificate of search confirming this fact. The respondent has not rebutted these assertions or demonstrated the nature of his interest on the suit property. The applicant has also shown through photographs that the respondent has caused damage to the property without any justification.

The applicant's prayers of injunctive relief are granted in terms of paragraph 3 of the motion. I award costs to the applicant.

Dated, Signed and Delivered at Nakuru this 29th day of February, 2012.

W. OUKO

JUDGE