



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MALINDI**

**CIVIL SUIT 33 OF 2011**

**FRED KAZUNGU JUSTIN**

**DIND.....PLAINTIFF**

**VERSUS**

**CHARO KATANA KITHI alias KATANA CHARO  
KITHI.....DEFENDANT**

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

1. Through the plaint filed on 15<sup>th</sup> April 2011, the plaintiff is seeking the following substantive prayers against the defendant:-

(i) “Permanent injunction restraining the Defendant, his servants, agents, family members and/or any other person deriving interest under him from trespassing and living on plot No. L. R. 436 situate at Ngerenyi belonging to the Plaintiff and eviction thereof.”(sic)

2. Although the defendant was served with Summons to Enter Appearance, he did not enter appearance or file a defence and an exparte judgment was entered against him on 8<sup>th</sup> August, 2011. Thereafter, the suit proceeded to formal proof on 21<sup>st</sup> March, 2012. Again a Hearing Notice was served on the defendant but he did not attend. The hearing proceeded exparte with the plaintiff adducing evidence to the effect that in the year 1992, he entered into a sale agreement with the defendant in respect of the suit property described as **L. R. NO. 436 NGERENYI SETTLEMENT SCHEME**.

3. After the necessary consents were obtained, the property was registered in the plaintiff’s name on the 18<sup>th</sup> March, 2005. The defendant gave vacant possession to the plaintiff and the plaintiff installed his workers on the site. However, soon after, the defendant returned and threw out the plaintiff’s workers and forcefully took possession of the suit property and has continued occupy the premises to the exclusion of the plaintiff.

4. The plaintiff’s oral and documentary evidence supports his claim and was not controverted in any way. Pw 2, the area local chief corroborated the same. It is evident from the Plaintiff’s evidence that the defendant disposed of his title to the suit property through the sale agreement. His title was extinguished upon the registration of the suit property in the plaintiff’s name. Hence the defendant`s forced re-entry to the suit property is unlawful.

5. As a bonafide purchase for value the plaintiff is entitled to vacant possession of his suit property. I find that the plaintiff has established his case on a balance of probabilities and will enter judgment for him in terms of prayer (i) of the plaint with costs and interest.

Delivered and signed at Malindi this 30<sup>th</sup> day of **May, 2012** in the absence of parties.

**C. W. MEOLI**  
**JUDGE**