



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT KERICHO**  
**CIVIL CASE NO.75 OF 2010**

ESTHER CHESANG SOI.....PLAINTIFF

VERSUS

WILSON MAKERET SOI.....DEFENDANT

**RULING**

The Plaintiff, **Esther Chesang Soi**, avers in the Complaint to the suit herein that she is the proprietor of the land known as **Kericho/Chamagel/176/** which is registered under the **Registered Land Act, Cap 300**. She avers that she has indefeasible and absolute title to it. In the Complaint filed by her on 2/11/2010, she also avers that the Defendant, **Wilson Makeret Soi**, moved into the said land in the year 2009 without her consent or color of right and that he took possession of the same and started erecting structures on it and commenced farming activities including burning bricks in total disregard of the Plaintiff's proprietary interest. The Plaintiff seeks in the suit an order for vacant possession and eviction of the defendant therefrom. He also seeks a permanent injunction to restrain the defendant, his servants, agents and/or persons claiming through him from trespassing.

The defendant was served with summons to enter appearance on 8/11/2010 and on 6/12/2010, he entered appearance through his advocates, Messrs Koech K. J. & Co. No defence has hitherto been filed.

On 2/11/2010, before service of summons had even been effected and before the defendant had entered appearance, the Plaintiff lodged the Chamber Summons application dated 2/11/2010 seeking an interlocutory injunction order to the effect that the Respondent be restrained from entering into the suit land and from dealing or interfering with the suit land.

The application came up for inter parties hearing on 8/12/2010. Mr. E.A. Miruka appeared for the Plaintiff while Mr. G.M. Maengwe advocate appeared for the Defendant. At the behest of Mr. Maengwe who held brief for Mr. J.K. Koech, Advocate for the Defendant, the hearing was adjourned to 26/1/2011 when it was heard. On that day, the Defendant and his Counsel did not attend Court, nor had any defence been filed although the period of filing defence had elapsed. The Defendant too had not filed either grounds of opposition to the application or a replying affidavit. But clearly the Defendant was aware of the application and appeared to have been served and that is why he had legally been represented on 8/12/2010.

The orders sought in the application, if granted, will preempt the hearing. Such orders, if granted, would result in the case being determined before it is heard.

As the Defendant has failed to file defence, the suit should proceed to *ex parte* hearing at which the plaintiff may adduce evidence with a view to obtain the orders he seeks.

The application dated 2/11/2010 is disallowed but there will be no order as to costs.

**DATED at KERICHO this 7<sup>th</sup> day of March 2011**

**G.B.M KARIUKI, SC**  
**RESIDENT JUDGE**

**COUNSEL APPEARING**

Mr. E. A. Miruka, Advocate, for the Plaintiff

Mr. Maengwe, holding brief for, Mr. J. K. Koech, Advocate, for the Defendant

Mr. Bett, Court clerk