



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

**AT NAIROBI**

**ELC SUIT NO. 1471 OF 2007**

**GENERAL PLASTICS LIMITED.....PLAINTIFF**

**VERSUS**

**JOHN HINGA.....DEFENDANT**

**JUDGMENT**

The plaintiff is a limited liability company and the registered proprietor of a parcel of land known as LR No. 13413 situate in Embakasi within the City of Nairobi. In the year 2002 or thereabout, the plaintiff discovered that the defendant had wrongfully entered and taken possession of the suit property and proceeded to erect or cause to be erected a building thereon. As a result the defendant has trespassed onto the plaintiffs land.

By reason of the defendant's action, the plaintiff has been deprived of the use and enjoyment of the said parcel of land and has suffered loss and damage. In the plaint dated 24<sup>th</sup> November and filed on 3<sup>rd</sup> December, 2004 the plaintiff claimed as against the defendant vacant possession, mesne profits and damages for trespass. The record shows that the defendant was served with summons to enter appearance but did not enter any appearance or file any defence. This suit was therefore listed for formal proof.

At the hearing one Victor Lous Fernandes who is the General Manager of the plaintiff gave evidence. Before them he had filed a witness statement dated 6<sup>th</sup> April, 2011 which he adopted at the time of the hearing. He produced documents relating to the purchase of the said purchase of land by the plaintiff and and the registered title in its name.

The evidence adduced by this witness is uncontroverted. I watched him give evidence and assessed his demeanour. I have no doubt that what he told the court is the truth and in the absence of any rejoinder from the defendant I find that the plaintiff's case has been proved.

The witness told the court he had abandoned prayer (b) of the plaint which related to mesne profits. His case is that the plaintiff is mostly interested in the possession of the property. Accordingly, there shall be judgment for the plaintiff against the defendant for vacant possession as prayed in the plaint.

The defendant occupied the plaintiff's property without any authority and in so doing denied the plaintiff

the use and enjoyment thereof. In that regard I award a sum of Kshs. 50,000/= damages for trespass. The plaintiff shall also have the costs of the suit and interest at court rate.

Orders accordingly.

*Dated, signed and delivered at Nairobi this 21<sup>st</sup> day of June, 2011*

**A. MBOGHOLI MSAGHA**

**JUDGE**