

REPUBLIC OF KENYA.

IN THE HIGH COURT OF KENYA

AT KITALE.

CIVIL SUIT NO. 66 OF 2009.

ALFRED WANYONYI KHAITA.....PLAINTIFF.

VERSUS

BENSON TOILI KHAITA.....DEFENDANT.

J U D G M E N T.

1. The plaintiff filed this suit on 28th April, 2009 seeking for orders for eviction against the defendant from plot No. Sinyerere 98 and a permanent injunction restraining the defendant from interfering with plaintiff's land. The defendant was served with summons to enter appearance and having failed to do so, an interlocutory judgment was entered in favour of the plaintiff. This matter came up for formal proof and the plaintiff gave evidence and claimed that the defendant came on the property with his wife with whom they separated 34 years ago. He testified that the defendant is not his biological child. He however moved on the plaintiff's land in 2003 after requesting the plaintiff to assist him with 1 ½ acres to grow food for himself. After the plaintiff allowed the defendant to use the portion, the defendant started demanding for the plaintiff's land and started destroying the plaintiff's trees and setting his other properties on fire. The issue was reported to the local chief and he filed this suit seeking for the orders of eviction. The plaintiff produced a copy of the letter of allotment that he was issued by the Settlement Fund Trustee. He paid the loan and the rates pertaining to that property from 1970. He produced the receipts and also the P3 form regarding the injuries he sustained when the defendant attacked him and became disrespectful to the plaintiff. The plaintiff also relied on the evidence of his son Sammy Wanyonyi . He testified that he has lived with his mother and father on the suit land and it was in 2003 that the plaintiff allowed the defendant to cultivate 1 ½ acres. However, the defendant turned hostile and started asking for more land and he burned 10 acres of their land. Since the defendant has been disturbing the entire family, this witness supported the plaintiff's evidence that he should be evicted.

2. The plaintiff has been able to prove ownership of the suit land. The defendant was served but did not enter appearance or file a defence thus the plaintiff's case is not controverted. According the plaintiff is entitled to the prayers sought in the plaint that is the defendant is given 60 days within which to move out of the plaintiff's plot No. Sinyerere 98 failure to do so an order of eviction be issued. The defendant is also restrained by an order of permanent injunction from carrying any development issuing threats or in any manner interfering with the plaintiff's peaceful occupation of the suit plot. Since the defendant did not enter appearance, the plaintiff shall meet his own costs.

Judgment read and signed on 22nd day of July, 2011.

MARTHA KOOME.

JUDGE.