



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NYERI**

**CIVIL NO. CASE 103 OF 2008**

**JOSEPH PERMINUS MWAI WAMBUGU ..... PLAINTIFF**

**VERSUS**

**ROMANO NGATIA MUNUHE ..... DEFENDANT**

**JUDGMENT**

Joseph Perminus Mwai Wambugu, the plaintiff herein, sued Romani Ngatia Munuhe, the Defendant herein, vide the plaint dated 20<sup>th</sup> August 2008 in which the plaintiff sought for the Defendant to be evicted from L.R. no. Ndaiga/Umande/Block 6 (Nyariginu)145. he also sought for damages for trespass. The Defendant filed a defence and a counter-claim. When the suit came up for hearing, the defence case was ordered closed and the counter-claim dismissed because neither the Defendant nor his counsel turned up for the hearing of the case.

The Plaintiff testified alone in support of his case. Joseph Perminus Mwai (P.W.1) told this court that he owns L.R. no. Ndaiga/Umande/Block 6 (Nyariginu) 145. He produced as an exhibit in evidence the title deed which was issued on 27<sup>th</sup> July 1990. P.W.1 alleged that the Defendant trespassed into his land in the year 2006 whereupon he started to cultivate the same. He claimed he intended to cultivate wheat which would have earned him an average of between Kshs. 10,000/= and 15,000 per acre. The Plaintiff claimed he bought the land in 1990 from Nyariginu company Ltd., a land buying company. He stated that when he bought the land the same was vacant.

I have considered the evidence of the plaintiff and without the benefit of the evidence of the defence. The question is whether or not I should grant the eviction orders. Before granting the order, there must be evidence that the person seeking for judgment is the owner of the suit property. There must also be evidence to show that the person sought to be evicted trespassed the land in dispute. The Plaintiff has produced documentary evidence showing that he is the registered proprietor of L.R. no. Ndaiga/Umande/Block 6 (Nyariginu) 145. the aforesaid title was issued to the Plaintiff on 27<sup>th</sup> July 1990. the Plaintiff avers that the Defendant entered the land in the year 2006 whereupon he started cultivating the land in disregard of his protest. I am convinced that the plaintiff has given credible evidence to show that he is the registered proprietor of the land in dispute hence he should enjoy the rights guaranteed to registered owners under sections 27 and 28 of the Registered Land Act. The plaintiff has also shown on a balance of probabilities that the Defendant trespassed into the suit land hence he is entitled to the orders sought. The Plaintiff has sought for damages for trespass. He has attempted to tender evidence to prove mesne profits. He did not ask for mesne profits in his plaint hence I do not intend to give him such an order gratuitously. I will however give him a nominal figure of KShs, 10,000/= to represent damages for trespass.

In the end I enter judgment in favour of the Plaintiff and against the Defendant in the following terms:

- (1) The defendant is ordered to vacate L.R.no. Ndaiga/Umande/Block 6 (Nyariginu) 145 within 30 days from the date hereon. In default the Plaintiff will be at liberty to forcefully evict the Defendant at the Defendant's expense.
- (2) Ksh.10,000/= being damages for trespass.

(3) Costs of the suit.

Dated and delivered this 23<sup>rd</sup> day of September 2011.

J.K. SERGON  
JUDGE

In open court in the presence of Wachira h/b for Wahome for Plaintiff and Mr. Chweya h/b for Mwangi for the Defendant.

J.K. SERGON  
JUDGE