



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

**Civil Suit 23 of 2004**

**KILATAN ALOMAI .....PLAINTIFF.**

**VERSUS**

**EMMANUEL PKIACH.....DEFENDANT.**

**RULING.**

The preliminary objection notice is dated 15<sup>th</sup> December, 2008. It is based on the grounds.

1. That the suit herein is a non-starter, bad in law and incompetent, the claim being based on trust ought to have been instituted by way of originating summons under order XXXVI of the Civil Procedure Rules.
2. Section 29 of the Land Adjudication Act (Cap 284) Laws of Kenya ousts the jurisdiction of this court to determine the suit.
3. At paragraph 7 the plaintiff has pleaded thus:-

***“The plaintiffs claim against the defendant is for the recovery of a portion measuring 70 acres or thereabouts to be hired from Land parcel No. Chepkono/119 and an order declaring that the defendant is registered and holds the said 70 acres in Trust to the plaintiffs.”***

The relief sought are couched in the following terms:-

- (a) A declaration that the defendant holds a portion of 70 acres as plot No. 119 in trust to the plaintiff.
- (b) An order terminating the trust and requiring the defendant to execute the necessary forms to transfer the said 70 acres of plot No. 119 to the plaintiff and in default the Deputy Registrar of this honourable court to execute the forms on his behalf.
- (c) Costs.
- (d) Interest.

In the defence at paragraph 6, it is pleaded thus:-

***“The defendant shall cover that the plaintiff’s claim of trust, if any, which is denied I incompetent, bad in law and ought to be struck out and/or dismissed”***

In the premises, since the defendant conceded the preliminary points of law raised herein this suit be and is hereby struck out with costs to the defendants.

Dated and delivered at Kitale this 20<sup>th</sup> day of January, 2010.

**N.R.O. OMBIJA.**  
**JUDGE.**

Mr. Wanyonyi for Onyancha for Defendant.

Mr. Ingosi for Samba for Plaintiff.