



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT KITALE**  
**Civil Suit 72 of 2008**

**BELTINA CHEMTAI WILLINGTON .....PLAINTIFF**  
**VERSUS**  
**ROSELYNE KIMONO .....DEFENDANT**

**JUDGMENT**

By a plaint dated 3<sup>rd</sup> September, 2008, the plaintiff herein Beltina Chemtai Wellington sued the defendant herein Roselyne Kimono.

The plaintiff sought judgment against the defendant for:-

- (a) An order of eviction of the defendant from 2 acres being part of title No. Elgon Chemoge 1678.
- (b) A temporary and permanent injunction restraining the defendant from ever interfering with the plaintiff's land.
- (c) Costs
- (d) Interest on (c) above.
- (e) Any other relief this honourable court may deem fit to grant.

The defendant was served with Summons to Enter Appearance but failed to enter appearance or file defence. The matter thus proceeded by of formal proof.

The plaintiff testified that at all material times she was the sole proprietor of all that parcel of land known as title No. Elgon/Chemoge/678 measuring 2.9 hectares or thereabout. As proof thereof she produced title deed as Exhibit P 1. She bought the said parcel land in two transactions:-

- (i) The first portion on 4<sup>th</sup> November, 1994 at a consideration of 204,000/=
- (ii) The second portion on 5<sup>th</sup> February, 1995 at a consideration of shs. 12,000. As proof thereof she tendered in evidence exhibits P2 (a) and P2 (b) respectively.

To buttress her ownership rights as aforestated she tendered in evidence the green card as exhibit 3.

It was the plaintiff's case that in breach of his proprietary rights on or about 19<sup>th</sup> August 2008 the defendant without any colour of right entered into possession of his said parcel and occupied two (2) acres being part of his entitlement. To add salt to injury the defendant also constructed semi-permanent structures captured in photographs exhibited as P4.

In the premises, it was the plaintiff's case that the defendant's acts constitute trespass which is actionable *per se* hence this suit.

As I said earlier the defendant was served with summons to Enter appearance and failed to do file appearance or defence within the time prescribed by law. As it were there is evidence of the plaintiff in support of her case and no evidence on the part of the defendant in rebuttal.

I have carefully analyzed the available evidence on record. Having done do, I am of the persuasion that the plaintiff has proved her case on a balance of probability.

Accordingly there shall be judgment for the plaintiff against the defendant in terms of prayer (a) (b) (c) and (d) of the plaint.

Dated and delivered at Kitale this 4<sup>th</sup> day of March, 2010.

**N R O OMBIJA  
JUDGE**

Mr. M. Wafula for Munialo for plaintiff.