

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

Civil Case 72 of 2007

SULEIMAN KARUGA NJOROGE.....PLAINTIFF

VERSUS

HENRY AMAI1ST DEFENDANT

JOSEPH CHACHA.....2ND DEFENDANT

JUDGMENT

The plaintiff is the registered proprietor of all that piece of land situate at Kapsita and known as **Title No. Nakuru/ Kapsita/1131** (the suit land). He claims in his plaint that at the time he bought it from Mary Chepkurui, the first defendant was residing on it as the said Mary Chepkurui's caretaker. Despite demand the first defendant has refused to vacate and has instead engaged the second defendant, a surveyor, to subdivide it. He therefore prays for an injunction to restrain the second defendant from subdividing it and the eviction of the first defendant. He also prays for the costs of this case.

In their joint statement the defendants made a general denial of the plaintiff's claim and averred that this suit is bad in law as it does not disclose any cause of action against them. The first defendant further averred that he has been occupying the suit land since 1995.

Though served, neither the defendants nor their advocates appeared to defend the case. The plaintiff testified and produced the sale agreement showing that he bought the suit land from the said Mary Chepkurui for Kshs.300,000/= and a title deed showing that the land is indeed registered in his name. He said when he attempted to take possession of it in 2006, he found that the first defendant had constructed a structure on it which was not there when he bought it. He stopped the second defendant from subdividing it on

26th March 2007. He therefore prayed for an injunction against the second defendant and the first defendant's eviction.

Upon consideration of the plaintiff's uncontroverted testimony, I am satisfied that the plaintiff has proved his claim against both the defendants. As the registered proprietor of the suit land, the plaintiff is entitled to both its exclusive occupation and use. In the circumstance I grant the plaintiff the reliefs he seeks. A perpetual injunction shall issue to restrain the second defendant from entering and/or subdividing the suit land. A further order shall issue to evict the first defendant from the suit land if he does not vacate within 30 days of service of this order upon him. The plaintiff shall also have the costs of this suit against both the defendants plus interest thereon at court rates from the date of taxation.

DATED and DELIVERED at Nakuru this 12th day of May, 2010.

D. K. MARAGA

JUDGE.