



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KITALE
Civil Suit 5 of 2005**

**ZEPHANIA KHISA SAUL.....PLAINTIFF.
VERSUS
MOSES WAFULA SAHANI.....DEFENDANT.**

J U D G M E N T.

By a plaint dated 6th January, 2005 the plaintiff herein, **ZEPHANIA KHISA SAUL**, sought judgment against the defendant for:-

- (a) an order of eviction.
- (b) A permanent injunction restraining the defendant, whether by himself, his agents, servants and/or any other persons claiming interest and/or acting through the defendant from trespassing onto land title KIMILILI/SIKHENDU/1303 and KIMILILI/SIKHENDU/1304.

The defendant was served with summons to enter Appearance on the 23rd day of January, 2005 (as per the affidavit of John Wafula Simatwa sworn on the 8th day of March, 2005) but failed to enter appearance.

Consequently, interlocutory judgment was entered against him on 30th March, 2005. The suit was first fixed for formal proof on 28th November, 2005 and after several adjournments heard on 5th May, 2010.

The plaintiff's cause of action is embodied on paragraphs 4 and 5 of the plaint.

The plaintiff testified that he is the registered owner of land parcels No.s KIMILILI SHIKHENDU/1303 and KIMILILI/SHIKHENDU 1304. In proof thereof the plaintiff tendered in evidence two title deeds as Exhibits 1 and 2 respectively. It was the plaintiff's case that sometime in the year 1996 the defendant without any colour of right entered into the said parcels and commenced ploughing and committing acts of waste thereon. The plaintiff contends that the defendant's acts as aforesaid constitute trespass.

As I said earlier, the suit is undefended. I have carefully gone through the plaintiff's pleadings and evidence in court. Having done so, I am persuaded that in the absence of evidence in rebuttal the plaintiff is the owner of the two parcels; namely; KIMILILI/SHIKHENDU/1303 and 1304 respectively. Accordingly, the acts of the defendant in ploughing the said parcels and committing acts of waste amount to trespass. The plaintiff has thus proved his case on a balance of probability.

Accordingly, there shall be judgment for the plaintiff against the defendant as follows:

1. An order of eviction from parcels numbers KIMILILI/SHIKHENDU/1303 and KIMILILI/SHIKHENDU/1304.
2. A permanent injunction restraining the defendant, whether by himself, his agents, servants and/or any other person claiming interest and/or acting through the defendant from trespassing onto land titles KIMILILI/SIKHENDU/1303 and KIMILILI/SIKHENDU/1305 however and whatsoever.
3. Costs.
4. Interest at court rates.

It is so ordered.

Dated and delivered at Kitale this 5th day of May, 2010.

N.R.O. OMBIJA.
JUDGE.