



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KERICHO
CIVIL CASE NO.76 OF 2007

KIPLANGAT ARAP KORIR.....PLAINTIFF

VERSUS

JOSEPH KIPLANGAT CHEPKWONY.....1ST DEFENDANT

SARAH CHEPNGENO CHEPKWON.....2ND DEFENDANT

STANLEY KIPKOECH.....3RD DEFENDANT

KIPYEGON KOECH.....4TH DEFENDANT

JUDGEMENT

This suit came up for hearing on 30th June 2010 when the Plaintiff testified but called no witness. The 1st and the 4th Defendants did not enter appearance after they were served with summons to enter appearance, nor did they file defence. The 2nd and 3rd Defendants entered appearance through their advocates, Messrs Chelule & Company who did not file defence. So, when the hearing commenced on 30th June 2010, the 2nd and 3rd Defendants though entitled to cross examine the Plaintiff could not tender evidence. The 1st and 4th Defendants were not entitled to defend and even if they had turned up in Court, they would not have been entitled to cross examine the Plaintiff.

In the amended Plaint filed in Court on 15th October 2007, the Plaintiff alleged that the Defendant had trespassed on his land known as **Transmara/Kimintet/441** and erected thereon temporary structures. He sought in the Plaint an order for the Defendants' eviction from the said land and payment of mesne profits and costs.

In his evidence, the Plaintiff produced as exhibit No. P1 the Title Deed for Land Parcel No. **Transmara/Kimintet "D"/441** which shows that the Plaintiff is the registered proprietor of the said parcel of land and has been so registered from 7th May 2004. He told the Court that the Defendants forcefully entered the land and are still on the land to-date. They have put up a house, he said, and are cultivating the land. When the Plaintiff demanded that the Defendants do move out, they refused to do so and threatened him. That is when he decided to file this suit. The houses on the land are grass thatched and the area of land occupied by the Defendants is about six acres. It was the evidence of the 4th Defendant that the 4th Defendant has teamed up with another person and both have put up a timber structure and are intent on putting up a posho mill. Unless stopped by the Court, the defendants, said the Plaintiff, will continue to wrongfully trespass on his land. The Plaintiff told the Court that he is now unable to make use of his land due to the trespass complained of.

In cross examination by Mr.Chelule, the advocate for the 2nd and 3rd Defendants, the Plaintiff told the Court that the Defendants moved into the land after he became its proprietor. The 2nd Defendant, he said, has her own land nearby.

I have perused the amended Plaint and the evidence adduced by the Plaintiff. I am satisfied that the Plaintiff has proved that he is the registered proprietor of the suit land. I so find. I am also satisfied that the Plaintiff has on the balance of probabilities proved that the Defendants went into occupation of the suit land without his knowledge or consent and put up structures on it and started cultivating it. In doing so, the Defendants trespassed on the Plaintiff's said land. They thus committed the tort of trespass which is actionable. They are still on the land. It is my finding that the Defendants have no defence to the trespass complained of.

Accordingly I find for the Plaintiff and enter judgement against the Defendants jointly and severally. An order of eviction shall issue forthwith against the Defendants for their ejection and eviction from the suit land No **Transmara/Kimintet/441**. The Defendants shall pay the costs of this suit.

DATED at **KERICHO** this 28th day of July, 2010

G.B.M KARIUKI

RESIDENT JUDGE

COUNSEL APPEARING

M/S. E.M. Orina & Co.Adv. For the Plaintiff.

Mr.Chelule for the 2nd &3rd Defendants.