



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT KERICHO**  
**CIVIL CAUSE NO. 63 OF 1998**

**RICHARD C. YABAN** .....  
.....**PLAINTIFF**

**VERSUS**

**KIPNGERECHI TOWETT** .....  
.....**DEFENDANT**

**JUDGMENT**

The Plaintiff, **Richard C. Yaban**, filed this suit against **Kipngerechi Towett** on 20<sup>th</sup> November, 1998 seeking eviction of the latter from the land known as **Kericho/Kipkimolwa/1067** (“the suit land”) which the Plaintiff averred in his plaint that his property and is registered in his name. The Plaint states that the Defendant is in possession and occupation of the suit land without the Plaintiff’s consent.

The Defendant entered appearance to the summons on 21<sup>st</sup> December, 1998 through his advocates, Messrs Migiro & company. No defence was ever filed.

The suit came up for hearing before me on 26<sup>th</sup> July, 2010. The Plaintiff testified but did not call other witnesses. He told the court in his evidence that he became the registered proprietor of the suit land on 27<sup>th</sup> November, 1995. He produced the Title Deed to the suit land to prove this. It shows that the land measures 2.93 hectares and is registered under the **Registered Land Act, Cap 300**. He further told the court that he did not allow the Defendant to be on his land and that he wanted to forceably throw him out but he feared there might be breach of peace and consequently filed this suit. He is desirous of making use of his land, he said, but was unable to do so due to wrongful occupation by the Defendant. It was his evidence that the Defendant has put up a house on the suit land. The Plaintiff also sought mesne profits against the Defendant.

Mr. Migiro, learned counsel for the Defendant, cross examined the Plaintiff. What came out of the cross examination was that the Plaintiff acquired the suit land from his father and that the Plaintiff’s father may have promised to sell to the Defendant a portion of his land but did not do so before he died.

I have perused the evidence adduced by the Plaintiff which is the only evidence tendered in this suit. I am satisfied that the Plaintiff has established that he is the registered proprietor of the suit land. I am also satisfied that the Plaintiff has proved on the balance of probabilities that the Defendant is on the suit land without any lawful claim or right and without the consent of the Plaintiff. It is my finding that the Defendant’s possession and occupation of the suit land amounts to a tort of trespass. I so hold. The Defendant is a trespasser and has violated the Plaintiff’s right to occupy and use his land.

I have no alternative but to find in favour of the Plaintiff which I do. I enter judgment in favour of the Plaintiff and order eviction of the Defendant from the suit land within 30 days from the date of delivery of this judgment. The Defendant shall pay the costs of this suit to the Plaintiff.

I decline to award mesne profits as no evidence was led in this regard.

**DATED at KERICHO** this 17<sup>th</sup> day of November, 2010

**G.B.M. KARIUKI, SC**  
**RESIDENT JUDGE**

**COUNSEL APPEARING**

Mr. Oboso advocate for the Plaintiff

Mr. Migiro advocate for the Defendant