



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KERICHO
CIVIL CAUSE NO. 62 OF 1998

WILLIAM K. TUEI

PLAINTIFF
VERSUS

KIPNGERECHI TOWETT

DEFENDANT

JUDGMENT

The Plaintiff, **WILLIAM TUEI**, brought the suit herein against the Defendant, **KIPNGERECHI TOWETT**, on the ground that the Defendant has since 1995 trespassed on his land No. **Kericho/Kipkimolwa/1068**. He has sought in the suit an order of eviction against the Defendant, and mesne profits and costs of the suit.

According to the affidavit of service sworn on 10th December, 1998 by Richard Kiplangat, a Process Server, the Defendant was served on 7th December, 1998 with summons to enter appearance. On 23rd December, 1998, Messers Migiro & Co. Advocates went on record for him.

On 26th July, 2010, this suit came up for hearing without the Defendant ever having filed defence.

The Plaintiff testified that he is the registered proprietor of the land known as **KERICHO/KAPKIMOLWA/1068** (“the suit land”) and was so registered on 27th November, 1995. He produced as an exhibit the Title Deed to prove this. The Title Deed shows that the land is registered under the **Registered Land Act, Chapter 300** of the laws of Kenya. The Plaintiff told the court that the Defendant entered the suit land in 1995 without his (Plaintiff’s) consent or permission and that he still persists on remaining on the suit land. The Plaintiff stated that he bought the suit land and got it registered in his name on 27th November, 1995 when a Title Deed was issued to him.

It was the Plaintiff’s evidence that he has requested the Defendant many times to vacate the land but the latter has failed to do so. He now seeks orders of the court to compel the Defendant to move out. The Plaintiff also prayed for costs of the suit. He called no other witnesses. He was represented by Mr. E.M. Orina, Advocate.

Mr. Migiro, learned counsel for the Defendant who had entered appearance for the Defendant but had not filed defence cross examined the Plaintiff. He managed to extract evidence to show that the Plaintiff had bought land from the Plaintiff’s father and that the latter had also agreed to sell to the Defendant some land but this never happened. As at the time when the Plaintiff bought the suit land and became the registered proprietor of it, the Defendant was on the land. But this did not deter the Plaintiff from buying it. He is now the registered proprietor. The Defendant did not adduce any evidence and he could not do so as he had not filed defence to the suit.

In the result, the only evidence before the court was that adduced by the Plaintiff who has established that he is the legal owner of the parcel of land comprised in the title NO.

KERICHO/KAPKIMOLWA/1068. From the evidence, it is my finding that the Defendant is on the land without the consent or permission of the Plaintiff. It is also my finding that the Defendant has refused and/or failed to vacate despite repeated requests to do so by the Plaintiff.

The Defendant does not have any claim or right to be on the suit land and his occupation of it is wrongful. It is also my finding that the Defendant has committed and continues to commit the tort of trespass. I therefore find for the Plaintiff and enter judgment against the Defendant and order that the Defendant shall be evicted from the land. I further order that the Defendant shall be given 30 days from the date of this judgment to move out failing which he shall be forceably removed and evicted.

As no evidence of mesne profits was adduced, I decline to make any order in this regard.

The Plaintiff shall be entitled to and shall be paid the costs of this suit by the Defendant.

DATED at **KERICHO** this 17th day of November, 2010

G.B.M. KARIUKI, SC
RESIDENT JUDGE

COUNSEL APPEARING

Mr. S.K. Oboso of Oboso & Co. Advocates appeared for the Plaintiff

Mr. Migiro advocate appeared for the Defendant