



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KITALE**

**CIVIL SUIT NO. 65 OF 2009**

**SIMIYU NAMAWANGA .....PLAINTIFF**

**VERSUS**

**SHEM KORORIA**

**PETER KIMINYI.....DEFENDANTS**

**JUDGMENT**

1. The plaintiff filed this suit on 28<sup>th</sup> April 2009 seeking for an order of eviction against the Defendants, agents, servants or family from Mt. Elgon/Kaptama/265 as well as costs of the suit. The summons to enter appearance were served upon the defendants as per the affidavit of service filed on 21<sup>st</sup> January, 2010. The defendants did not enter appearance and no defence was filed and an interlocutory judgment was entered on 10<sup>th</sup> February, 2010.

1. The matter was filed for formal proof. the plaintiff **Simiyu Namawanga** gave evidence in support of the claim. He testified that he is the registered proprietor of **title No. Elgon/Kaptama/265 approximately 5.6 Hectares**. He was issued with a title deed on 9<sup>th</sup> February, 1996 although he has lived on this parcel of land with his family from 1964. The plaintiff testified that due to the tribal clashes that rocked the area in 1992, he was forced to flee from his land for safety. That is the two defendants, **Shem Kororia** and **Peter Kiminyi** trespassed upon his land without any color of right.
2. Despite demand that the defendants should vacate the plaintiff's parcel of land, they have failed and neglected to move out of the plaintiff's parcel of land. The plaintiff testified that he is aged 86 years. He has children and grand children who depend on him; he urged the court to issue order of eviction against the two defendants and to award him costs.

The defendants did not enter appearance; the plaintiff was able to prove his case to the required standard that he is the registered proprietor of the land known as **Elgon/Kaptama/265**. His evidence was not controverted, he produced the original certificate of title for the suit land.

Accordingly the plaintiff is entitled to the prayers sought as follows:-

1. There be an eviction order against the plaintiff/agents/servants/family from Elgon/Kaptama/265 if they fail to move within 90 days of being served the order.
2. The plaintiff shall have the costs of this suit.

Judgment read and signed on 12<sup>th</sup> November, 2010.

MARTHA KOOME

JUDGE.