



1. Land Law

2. Subject of main suit

- a) Land LR. Kericho/Kapkures/311
- b) Trespass
- c) Eviction
- d) Injunction

3. Defendant fails to enter appearance or file defence.

**Obiter dictum** – Interlocutory judgment entered by Deputy Registrar on

15<sup>th</sup> December, 2008 set aside

**Order IXa r 8 cpr, Order IXb cpr** applies.

4. **Trial**

- a) Defendant protest the sale of land by his father to plaintiff
- b) Plaintiff obtained title
- c) Defendant fails to give plaintiff quite possession.

5. **Held** – Eviction orders to issue

6. **Case Law** – Nil

7. **Advocates**

J.K. Rono advocate instructed by M/S J.K. Rono & co. advocates

for the Plaintiff – present

N/A for the Defendant

**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT KERICHO**

**CIVIL SUIT 48 OF 2008**

**JOHN KIPNGENO KORIR ..... PLAINTIFF**

**VERSUS**

**KIPKOROS ARAP SOI *alias* KIPTEGISYOT .... DEFENDANT**

**JUDGMENT**

**I: Procedure**

1. John Kipngeno Korir holds land parcel No. Kericho/Kapkures/311 approximately 1.76 hectares as absolute proprietor from 4<sup>th</sup> June, 1996.
2. According to his Complaint and evidence the defendant forcefully entered onto the parcel of land, trespassed thereupon and has since the year 2006 refused to leave the said land.
3. On 22<sup>nd</sup> October, 2008 the plaintiff filed this land matter in the High Court of Kenya at Kericho. The defendant failed to enter appearance or file defence. The advocate for the plaintiff applied for Interlocutory Judgment from the Deputy Registrar under ministerial powers given (**order 48 Civil Procedure Rules**). The Deputy Registrar on the 15<sup>th</sup> December, 2008 entered Interlocutory Judgment.
4. The plaintiff applied through his advocate to set the suit down for hearing by way of formal proof.
5. When the matter came for trial, this court set aside the Interlocutory Judgment *Suo Moto* on grounds that in land matters, declaratory suits or suits that do not fall under contract or tort, no Interlocutory Judgment is permitted to be entered. **Order IXa** civil procedure rules requires under **rule 8** that the suit be instead set down for hearing under **Order IXb** civil procedure rules. That the defendant must be served with a hearing notice to notify him again that his suit is proceeding for trial.
6. The plaintiff duly served the defendant personally through a Process Server that his suit was coming for hearing but the defendant failed to attend court. The trial commenced, after being called out outside court under **order IXb r 3(a)** civil procedure rules.

**II: Trial**

7. The Plaintiff gave oral evidence. He stated that sometime in the year 1997 he had bought the suit land from the defendant's father and was accordingly issued with a title deed. His attempts to raise livestock on the property proved fruitless.
8. In the year 2006, the defendant moved onto the suit property and built two semi permanent buildings. This was trespass and the plaintiff wants him out.
9. He sought the court's orders of **EVICTION** and an injunction to restrain the defendant from trespassing on the suit land.

**III: Opinion**

10. A land title deed duly registered in the names of the plaintiff has been presented to this court in evidence. That the plaintiff is indeed an absolute registered holder of the land parcel.
11. The defendant without color of right indeed has moved onto the said land and erected semi

permanent structures in the year 2006.

12. I would find that the plaintiff has established his case and accordingly grant him his prayers. That the defendant herein be evicted from the suit premises.

13. In evidence the plaintiff did not produce to this court **DEMAND NOTICE** to quit that was served upon the defendant that, failure to so quit, he would be sued in a court of law. This court holds that no costs will be awarded to him for this case.

**DATED** this 25<sup>th</sup> day of May, 2009 at **KERICHO**

**M.A. ANG'AWA**

**JUDGE**

**Advocates**

J.K. Rono advocate instructed by M/S J.K. Rono & co. advocates

for the Plaintiff – present

N/A for the Defendant