



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT KITALE**  
**CIVIL CASE 69 OF 2007**  
**WASHINGTON AINDA ONGATA:.....:PLAINTIFF**  
**VERSUS**  
**ERIC KIMUTAI:.....:DEFENDANT**  
**J U D G M E N T**

By a plaint dated 2<sup>nd</sup> May, 2007 the plaintiff sought orders that

- (a) The defendant, his servants and/or agents be restrained by way of a permanent injunction from entering, damaging and/or interfering in any way with land parcel known as L.R Plot No.2116/263.
- (b) Damages for trespass on the subject parcel.
- (c) Costs of the suit and interest thereon.

The plaintiff testified on oath that she is the registered owner of land parcel known as L.R No. 2116/263 situate in Kilimani residential area of Kitale Municipality within Trans Nzoia District. As evidence of ownership he tendered in evidence and/or produced a letter of allotment dated 12<sup>th</sup> September 1972 as Exhibit 1.

That he complied with conditions of allotment by paying Sh.5043 to the Commissioner of Lands as consideration. He produced receipt in respect thereof as Exhibit P2. Subsequently he was issued with a title deed on 1<sup>st</sup> September 1977 which he produced in evidence as Exhibit 3. Since then he has been paying land rates to the Municipality of Kitale. He produced land rate receipts issued on 7<sup>th</sup> September 2007 and 16<sup>th</sup> July 2008 as exhibits P4 and P5 respectively.

With a view to exerting his proprietary rights, he put up a structure on the said plot in 1979. Notwithstanding his proprietary rights in the year 2006, the defendant herein, without any colour of right trespassed onto the subject parcel and commenced acts of wanton destruction. In particular he destroyed the gate to the compound, broke the door to the house and finally commenced destruction of the main house. As evidence of massive destruction he produced several photographs in support. He produced the bricks where the house was as exhibit 6(a). he further produced photographs showing the debris of the demolished house and area of the scattered debris as exhibit 6(b) and 6 (c) respectively.

He was categorical that it is the defendant who demolished his house because initially he had sent his workers and/or agents to cut the grass. These workers and/or agents were arrested and the defendant bailed them out.

The defendant was served with summons to Enter Appearance but failed to Enter Appearance or file a defence.

In the circumstances, I have evidence of the plaintiff in support of his proprietary rights and no evidence from the defendant in rebuttal. In the premises, I find as a matter of law and fact that the defendant has made up the case for the orders sought for on a balance of probability.

Accordingly, there shall be judgment for the plaintiff against the defendant

- (a) For a permanent injunction restraining the defendant, his servants and/or agents from entering, damaging and/or interfering in any way whatsoever and howsoever with land parcel known as L.R Plot No. 2116/263 situated in Kilimani area of Kitale Municipality within Trans Nzoia District.
- (b) For damages for trespass on the subject parcel.
- (c) Costs of the suit and interest thereon.

The plaintiff to set a date for assessment of damages.

Dated and delivered at Kitale this 25<sup>th</sup> day of May...2009.

**N.R.O. OMBIJA**

**JUDGE**

**Mrs Munialofor Arunga for plaintiffs**