



**REPUBLIC OF KENYA**  
**HIGH COURT AT MERU**  
**CIVIL CASE 167 OF 2008**

**STANLEY LUMUMBA BARUNGU THIKANYI.....PLAINTIFF**

**VERSUS**

**CHARLES MWITHALIE.....DEFENDANT**

**JUDGMENT**

The plaintiff by his claim filed herein averred that the defendant had unlawfully entered his parcel no land No. NJIA/BURI-E-RURI/3297 that the defendant had proceeded to construct a residential house and other developments on the said land. Despite his demand that the defendant do vacate the land, that the defendant had failed to so vacate. He therefore sought orders for injunction against the defendant in eviction. When the case came up for hearing, the plaintiff and the defendant were present in court and so were their respective advocates. The advocates for the defendant sought to withdraw from acting for the defendant. The court gave an opportunity to the said advocate to consult with his client outside court before the court entertained his application. When the matter was called back at 12.30pm, the defendant and his counsel were absent but as the plaintiff began to give evidence defence counsel walked in. The case of the plaintiff proceeded. The plaintiff stated that the defendant was his brother. That he trespassed upon his land and remained there from September 2003. He began to build a house. That there was a court order issued stopping him from continuing with the construction but he however continued with the construction. The plaintiff said that the suit property was registered in his name. He submitted in evidence the title deed. He stated that he had severally tried to remove the defendant from his land but he had been unsuccessful. As stated before, during the tendering of the plaintiff's evidence in chief, the advocate for the defendant walked in. He addressed the court and stated that he still wished to withdraw from acting for the defendant. Leave was granted as sought and he was excused. The defendant refused to return into the court. There was therefore no evidence tendered by the defendant. In my view, the plaintiff has proved on a balance of probability his case. He proved that he is registered owner of the suit property. By his uncontroverted evidence, he proved that the defendant had unlawfully entered into his land and had constructed buildings thereon. This entry and construction was without the permission of the plaintiff. The plaintiff is therefore entitled the prayers that he seeks in this claim. The judgment of this court is as follows:-

- (1) The defendant is ordered to vacate property NJIA/BURI- E-RURI/3297 within 30 days from this date hereof.***
- (2) If the defendant does not vacate as provided in number 1 above, an order shall issue for his eviction forthwith without further reference to this court.***
- (3) An order is hereby issued of injunction against the defendant that from 30 days hereof not to enter remain or otherwise interfere with the plaintiff's land parcel No.NJIA/BURI-E-RURI/3297.***
- (4). The plaintiff is awarded costs of this suit***

Dated and delivered at Meru this 25<sup>th</sup> day of September 2009.

**MARY KASANGO**

**JUDGE**