

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAKURU

Civil Case 91 of 2007

SAMUEL KIMUTAI KONGKONG.....PLAINTIFF

VERSUS

SAMUEL ARAP SANG.....DEFENDANT

RULING

The plaintiff Samuel Kimutai Kongkong filed this suit on 9th of May 2007 against the defendant. There was default judgment entered in favour of the plaintiff and the matter proceeded on formal proof. The plaintiff gave evidence in support of his claim over property known as **Kericho/Londiani Kendowa/Block 3 Chebowor /213** measuring 0.97 hectares. The plaintiff produced the original title to the suit premises which was registered on the 6th December 2006. He also produced a search certificate issued by the District Land Registrar on 29th October 2007 to show that the title over the suit premises belongs to the plaintiff.

It was the plaintiff's case that the defendant entered into his land sometimes towards the end of 2006 and erected structures and started cultivating the suit land thereby denying the plaintiff quiet and peaceful enjoyment of his land. The plaintiff also produced a photograph to show the extent of which the defendant had invaded his land and put up structures. The plaintiff therefore sought for orders of eviction against the defendant his servants or workers and the removal of all the buildings and structures from the plaintiff's parcel of land.

Upon careful consideration of this matter especially the photographs produced to show the extent of the trespass it is clear that the structures are old house, over grown trees and fences which were definitely not erected towards the end of 2006. I have also examined the affidavit of service to satisfy myself that the summons was properly served and I find the mode of service unsatisfactory. The summons were served upon Mrs. Jane Sang who declined to sign while giving reasons that there is another suit filed against the plaintiff at Kericho High Court. For these reasons I am not satisfied that the plaintiff properly effected the service of summonses. I decline to grant the orders and order summons be served properly. The original documents produced by the plaintiff especially the title are returned to him. There will be order as to costs.

Ruling read and signed this 25th day of January 2008

M. KOOME

JUDGE

25/1/2008

Before Koome J.

Mwiti – Court clerk

Karanja for the plaintiff

N/A by defendant

Court: Ruling read and signed on 25/1/2008

M. KOOME

JUDGE