



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA OF KISII

Civil Case 54 of 2006

KERUBO ANGWENYI PLAINTIFF

VERSUS

CICILIA OGWARO)

KENNEDY OGWARO)

ATHIRIANO OGWARO) DEFENDANTS

JUDGMENT

By a plaint filed on 25th April, 2006, the plaintiff commenced proceedings against the defendants. The plaintiff alleged that she was the registered proprietor of a parcel of land known as **WEST KITUTU/MWAGICHANA/592** (hereinafter referred to as "**the suit property**"). She claimed that sometimes in **1970** or thereabout the defendants trespassed upon the suit property and put temporary structures thereon and commenced cultivating the same. She prayed for eviction orders against the defendants.

The defendants were served with summons to enter appearance and plaint but they did not enter appearance.

The plaintiff testified and produced a title deed to the suit property as an exhibit. The same was issued to her on 30th May, 1994. She reiterated that the defendants trespassed upon the suit property in 1970 and were still occupying the same. She alleged that they burnt her house and destroyed her crops. According to her, they did so because she is a widow. She said that the defendants had threatened to kill her if she ever went to the suit property. She urged the court to issue an eviction order against the defendants and also award her compensation for the loss and damage which she had suffered as a result of the defendants' unlawful occupation of her property. The plaint did not contain any prayer for such compensation.

While there is unchallenged evidence that the defendants trespassed upon the suit property in 1970 and have remained in occupation thereof to date, it is unfortunate that I cannot make any orders in favour of the plaintiff because the claim is time barred. **Section 7** of the **Limitation of Actions Act** Cap 22 states as follows:

"7. An action may not be brought by any person to recover land after the end of the twelve years from the date on which the right of action accrued to him or, if it first accrued to some person through whom he claims, to that person."

The plaintiff's suit is incompetent and I dismiss the same. There will be no order as to costs.

DATED, SIGNED and DELIVERED at Kisii this 8th day of April 2008.

D. MUSINGA

JUDGE.

In open court in the presence of:

Mr. Minda for the Plaintiff

_____ for the Defendant

D. MUSINGA

JUDGE