



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
OF KISII**

Civil Case 167 of 2006

JOHNSON MOSE NYANGAU PLAINTIFF

VERSUS

DAVID ONCHOKE DEFENDANT

JUDGMENT

The plaintiff filed a suit against the defendant and alleged that he was the registered proprietor of land parcel number Nyansiongo Settlement Scheme/105 (hereinafter referred to as “*the suit land*”). He claimed that the defendant had forcefully trespassed to the suit land. The defendant had even purported to sell parts of the suit land to some third parties. The plaintiff prayed for eviction order against the defendant and any other person who may be claiming any right of ownership under him. He also prayed for mesne profits.

The defendant was served with summons to enter appearance together with the plaintiff but he failed to enter appearance or file any defence.

The plaintiff testified that the defendant was his own brother and he produced the title deed for the suit land as an exhibit, **P.Exh.1**. He purchased the land from the Settlement Fund Trustees. He produced the allotment letter dated 28th December, 1978 as **P.Exh.2**. He added that in 1984 there was a case between him and the defendant, **HCCC NO.259 of 1984 at Kisii**, wherein the defendant was ordered to vacate the suit land. The defendant moved out but left some people in occupation of the land. It appears that later on the defendant returned to the suit land. The plaintiff said that since 1984 he had not been able to use his land and he prayed for mesne profits. However, he tendered no evidence in proof of his claim for mesne profits.

From the evidence on record, the plaintiff is the registered proprietor of the suit land. He proved that by production of his title deed. In the absence of any evidence from the defendant, having failed to defend this suit, I find that the defendant has no right to occupy the suit land and hereby order him to vacate the same within the next thirty days from the date hereof, failing which he shall be forcefully evicted.

As regards the other people who are in occupation of the land, the plaintiff should have sued them together with the defendant, particularly so if they are alleging that they purchased portions of the suit

land from the defendant. It would not be right to make an order against them before granting them an opportunity to be heard.

The plaintiff did not prove his claim for mesne profits and I dismiss that claim. The defendant shall bear the costs of this suit.

DATED, SIGNED and DELIVERED at KISII this 16th day of May, 2008.

D. MUSINGA

JUDGE.

Delivered in open court in the presence of:

_____ for Plaintiff

_____ for Defendant.

D. MUSINGA

JUDGE