



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

**AT KISII**

**Civil Suit 153 of 2006**

**CHARLES GICHANA ANGWENYI .....PLAINTIFF**

**VERSUS**

**FRANCIS OMBONYO ANGWENYI ..... DEFENDANT**

**RULING**

On 15<sup>th</sup> January 2007, the plaintiff filed an application by way of a Chamber Summons brought under order XXXIX rules, 1, 2, & 2A of the Civil Procedure Rules. He sought a temporary order of injunction to restrain the defendant, his servants, and/or or agents form interfering with and/or dealing with L.R. NO.WEST KITUTU/MWAMONARI/400, hereinafter referred to as “*the suit land*”, which is registered in his (the plaintiff’s) name.

The defendant is the registered proprietor of L.R. NO.KITUTU/MWAMONARI/401, which adjoins the suit land. The plaintiff deposed that the defendant had damaged boundary beacons that had been fixed by the District Land Registrar and trespassed into the suit land and allowed his animals to damage his coffee and Tea plants.

The plaintiff further alleged that the defendant had even been charged with the offence of trespass vide KISII CM CR.CASE NO.1881 of 2006. The plaintiff had suffered loss and damage as a result of the defendant’s acts of trespass.

The defendant denied the plaintiff’s averments and stated that it was the plaintiff who had severally trespassed onto his parcel of land. He added that the plaintiff, who is his brother, had brought many civil and criminal cases against him for no apparent reason.

The court granted interim orders of injunction and directed the Deputy Registrar, the District Surveyor, the area chief and the parties to visit the suit land and have the beacons pointed out. The site visit was done on 2<sup>nd</sup> March 2007. Thereafter a report was filed and it was established that there were no beacons on the ground. In April 2007, the District Land Registrar and the District Surveyor and the parties went back to the suit land. The surveyor carried out appropriate measurements and re-established the boundary delineating the two parcels of land. Concreted Cider posts were erected.

Subsequent thereto, the defendant filed before Marani Land Disputes Tribunal, Land Dispute Case NO.7 of 2007 claiming the entire suit land. The Tribunal dismissed the case on 21<sup>st</sup> June, 2007.

From the foregoing, it is clear that the defendant has indeed trespassed onto the suit land and the orders sought by the plaintiff against him must be granted which I hereby do. The defendant shall bear the costs of the plaintiff's application.

DATED, SIGNED and DATED at KISII this 11<sup>th</sup> day of July, 2008

**D. MUSINGA**

**JUDGE**

Delivered in open court in the presence of:

Mr. Ochwangi for the Plaintiff

Mr. Otieno HB for Mr. Minda for the Defendant

D. MUSINGA

**JUDGE**