

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAKURU

CIVIL CASE 8 OF 2008

DAVID KARANJA KIBERENGE.....1ST PLAINTIFF

GADSON NGUGI KIBERENGE.....2ND PLAINTIFF

VERUS

JENIFFER NJOKI.....1ST DEFENDANT

BEATRICE WAMBUI NGINGA.....2ND DEFENDANT

JUDGMENT

The six plaintiffs state in their plaint that they are since 15th October 2007 the registered proprietors of ALL THAT piece of land situate at Molo containing by measurement 5.922 hectares or thereabouts and known as **L.R. No. 533/426** (the suit piece of land). Prior to that it was registered in the name of Eliud Kiberenge Njoroge from 9th January 1975. They further claim that for sometime now the defendants have without any colour of light been unlawfully using for cultivation about 2 acres each of that piece of land. Prior to the registration of the suit piece of land in their names the defendants had taken the fourth and fifth defendants to a non existent body calling itself Molo Land Disputes Tribunal and that that body had made a decision on 20th November 2007 and filed it in the Senior Principal Magistrate's Court at Molo in Land Dispute Case No. 83 of 2007. Pursuant to that decision the defendants have started interfering with the plaintiff's use and enjoyment of the suit piece of land. They therefore pray for a permanent injunction to restrain the defendants by themselves, their respective servants or agents from interfering, remaining or in any way interfering in the plaintiffs' use and enjoyment of the suit piece of land, general damages and costs of this suit.

Upon being served with summons to enter appearance in this case the defendants simply ignored it and never entered appearance or filed a defence. After obtaining interlocutory judgment the plaintiffs set the suit down for formal proof.

At the hearing David Karanja Kiberenge testified on his own behalf and on behalf of all the other plaintiffs who are his relatives. Save for the 6th plaintiff, who is his brother's wife, the others are his brothers. He testified that the suit piece of land originally belonged to their late father, Eliud Kiberenge Njoroge. After his demise it devolved to them and they are now registered as tenants in common in equal undivided shares. He said that the defendants have no right whatsoever to occupy the suit piece of land or any portion thereof and prayed for judgment in terms of prayers (a) and (c) and abandoned the claim on general damages.

On the uncontroverted evidence of the 4th plaintiff and a copy of the Grant registered as No. I.R. 27562/1, **Exhibit 1**, I am satisfied that the plaintiffs are the registered proprietors of the suit piece of land. On that evidence I am further satisfied that the defendants have no claim or right whatsoever to occupy the suit piece of land or any portion thereof. In the circumstances I enter judgment for the plaintiffs in terms of prayers (a) and (c) of the plaint.

DATED and delivered at Nakuru this 2nd of July 2008.

D. K. MARAGA

JUDGE