



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

**Civil Case 87 of 2007**

**JIMMY MUSYOKI KILONZO ..... PLAINTIFF**

**VERSUS**

**PHILIP NTHEI ..... DEFENDANT**

**JUDGMENT**

1. In his Complaint dated 18/10/2007 the Plaintiff, Jimmy Musyoki Kilonzo pleaded that he was at all material times the registered owner of L.R. No. Kangundo/Masinga/1727 and that in 2003, the Defendant, Phillip Nthei entered into the said land without lawful cause and destroyed coffee without lawful cause and destroyed coffee trees therein and interfered with the lawfully created boundary.
2. The Plaintiff's prayers as set out in the said Complaint are:-
  - a. A mandatory and perpetual injunction restraining the Defendant either by himself, his agents, employees, servants and/or otherwise howsoever from entering, in any manner occupying, trespassing, destroying coffee trees and/or in any other way interfering with the Plaintiff's L.R. NO. KANGUNDO/ISINGA/1727.
  - b. An order and/or declaration that the Defendant do actuate fresh survey of L.R. NO. KANGUNDO/ISINGA/1727 at his cost so as to revert the boundary to its original position.
  - c. Any and/or other relief that this Honourable Court deems fit and expedient to grant in the aid of justice.
  - d. Cost and interests of this suit."
3. The Defendant was served with the summons to enter appearance but failed to do so and the matter was set down for formal proof. In his evidence the Plaintiff produced the Search Certificate for the title dated 24/9/2008 to confirm that he was the registered proprietor of the land (P. Exh.1). He also produced the map for the relevant area showing that the Defendant is the registered proprietor of title No. Kangundo/Masinga/236 which borders title No. 1727 aforesaid (P. Exh.2). He also confirmed that when the Defendant started entering the suit land, he gave him notice to stop his illegal acts but the Defendant did nothing.
4. The notice is dated 9/8/2007 (P.Exh.3). He prayed for orders as in the Complaint and in determining the matter I should state that this matter may well have been settled by the Land Disputes Tribunal for the relevant area but again this court has unlimited jurisdiction under Section 60 of the Constitution irrespective of other useful or relevant laws.

5. Secondly, without the Plaintiff's claim being denied in anyway, I can only but conclude that indeed the Defendant committed the acts complained of and I believe the Plaintiff's evidence on oath and which I have reproduced above.

6. Lastly, as to what orders are proper to be made, matters relating to boundaries of registered land can effectively be determined by invoking section 21 (2) of the Registered Land Act, Cap 300 which provides as follows:-

“ 21. (1) .....

21. (2) Where any uncertainty or dispute arises as to the position of any boundary, the Registrar, on the application of any interested party, shall, on such evidence as the Registrar considers relevant, determine and indicate the position of the uncertain or disputed boundary.”

7. That being the law, I will make the following orders:-

Let the Land Registrar in consultation with the District Surveyor, Machakos within 60 days of this order being served on them, visit the disputed boundary and revert the boundary in issue to its original location at the Defendant's cost.

8. I shall make no order as to the costs of the suit because it is undefended.

9. Orders accordingly.

Dated and delivered at Machakos this 25<sup>th</sup> day of November 2008.

ISAAC LENAOLA

JUDGE

In presence of: **Mr Makau h/b for Mr Musyoka**

ISAAC LENAOLA

JUDGE