



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)**

Civil Case 271 of 2006

PAUL MWANGI MWIRIGI..... PLAINTIFF

VERSUS

FRANCIS NYOIKE KARIANJA.....DEFENDANT

JUDGMENT

By a plaint filed on 21.3.2006, the plaintiff, Paul Mwangi Mwirigi sued Francis Nyoike Karianja seeking an order to evict the defendant Francis from the suit land. He also prayed for damages for loss of use.

The defendant was served with summons to enter appearance, the plaint and a verifying affidavit on 30th March, 2006, at his home having pointed out by the plaintiff, but the defendant refused and or failed to enter appearance or file a defence, prompting the plaintiff to request for judgment vide a request for judgment dated 29th May, 2006.

The interlocutory judgment was entered on 12th June, 2006, and a formal proof hearing conducted thereafter.

At the hearing, the plaintiff described himself as the proprietor of a piece of land described as Loc. 4/Gakui/520 for which he has the original title deed issued on 9.9.92.

This is land he gives out free of charge to people who use it to plant subsistence crops.

He bought the land from Joseph Njuguna Ngugi. He prayed the court to order Francis out of this land. He is a neighbour whom the seller gave a portion of the land to plough. That he has no title to the land and should have moved out when the plaintiff bought the land but he did not. The plaintiff prayed for damages for loss of use of land.

The defendant not having entered appearance or filed a defence was not entitled to be served with a Notice of the hearing. He did not appear at the hearing, leaving the plaintiff's evidence unchallenged. The plaintiff produced the original title deed to the suit land, registered in his name.

From the evidence on record, I am satisfied that the plaintiff proved his case on a balance of probabilities, so I find judgment for him against the defendant as prayed in prayer (a) of the plaint.

I will not award damages for loss of user of land because the plaintiff did not quantify his loss.

Finally, I award the plaintiff costs of the suit.

Dated at Nairobi this 15th day of March, 2007.

JOYCE ALUOCH

JUDGE