



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

Civil Suit 259 of 2000

CHRISTOPHER MICHAEL STRONG PLAINTIFF

VERSUS

MWANGI MWANIKI GITONGA DEFENDANT

JUDGEMENT

The Plaintiff instituted these proceedings on 8th November, 2000 against the Defendant seeking the following orders:-

- (a) A permanent injunction to restrain the Defendant from entering, occupying, alienating, building, transferring, charging, leasing, wasting, disposing of, or howsoever otherwise dealing with all that parcel of land known as Eldoret Municipality/Block 8/117.
- (b) An Order that the Defendant be evicted forthwith from all that parcel of land known as Eldoret Municipality/Block 8/117.
- (c) A mandatory injunction directing the Defendant to remove all the material he has deposited on all that parcel of land known as Eldoret Municipality/Block 8/117.
- (d) General damages for trespass on to the Plaintiff's land.
- (e) Costs of this suit.
- (f) Interest on (d) and (e) above at Court rates till payment in full.

In his Defence dated 6th December, 2000, the Defendant claimed a purchaser's interest over the suit property in that he claimed that a Company called Wheatland Motors Company Limited had sold him the leasehold interest at an agreed total consideration of Shs. 800,000/=.

Upon the application of the Plaintiff to strike out the Defence, this Court struck out the Defence on 28th March, 2002. The Defendant filed a Notice of Appeal. The said Appeal was subsequently struck out by the Court of Appeal.

This suit then was set down for formal proof of the Plaintiff's claim as set out in the Plaint. The Plaintiff testified on oath. He stated that he had acquired the suit property in 1974 but was issued with the Lease Certificate in 1979. The Plaintiff produced the original lease as an exhibit. It was the Plaintiff's testimony that he desired to dispose off the property and asked his lawyers M/s. Jim Choge Advocates to undertake the exercise. He in consequence handed the original Certificate of Lease to the said firm of

Advocates. It was the Plaintiff's testimony that he was advised by the Advocates that the sale could not take place as there was an inhibition registered against the title. Consequently, the Plaintiff asked his Lawyer then, to return the original Certificate of Lease for safe keeping but it was never returned. It was the Plaintiff's evidence that he only realised the Defendant's conduct adverse to the Plaintiff's title when the Defendant moved onto the suit premises and deposited building materials thereon. This prompted this action but not before the Plaintiff formally wrote to the Defendant asking him to move out of the suit premises.

The Plaintiff also produced original Official Search Certificate showing that he was registered owner of the lease interest and that there subsists an inhibitory order which would make it impossible to undertake any dealings in the suit land. The purported sale of the suit land to the Defendant by Wheatland Motors Company Limited during the subsistence of the inhibition order could not vest good title in the Defendant therefore.

The Plaintiff's case was that the Defendant had invaded the suit premises twice, once in the year 2000 and later in the year 2005. And this was notwithstanding the fact that the Defendant had, by filing civil suit No. 167 of 1999 against Wheatland Motors and others, acknowledged that he had good title to the suit premises. The actions by the Defendant demonstrate the Defendant's determination to trespass on private property notwithstanding full knowledge that he had no title thereto.

The Defendant's Counsel represented the Defendant at the Formal Proof and he did cross-examine the Plaintiff. The Plaintiff admitted that the Defendant had now vacated the property.

As a result of the foregoing, the Plaintiff did not press for the orders of eviction and mandatory injunctions. The Plaintiff also effectively abandoned the claim for general damages for trespass to the land.

Having considered the Plaintiff's testimony, and submissions, I do hereby hold that he has proved his case on a balance of probability. The Plaintiff is the registered proprietor and owner of the suit property with effect from 5th March, 1979. He acquired the interest thereto much earlier in 1974. I also do find that the Defendant unlawfully and illegally encroached upon and entered the Plaintiff's land thereby committing acts of trespass. The Defendant was duly given notice to vacate from the premises and notice of intention to sue. He did not heed and resisted this suit upto the Court of Appeal.

The net result is that I do hereby enter judgement for the Plaintiff and grant permanent injunction to restrain the Defendant from entering, occupying, alienating, building, transferring, disposing of, or howsoever otherwise dealing with all that parcel of land known as Eldoret Municipality/Block 8/117.

The Defendant shall pay costs of the suit to the Plaintiff with interest thereon at Court rates.

DATED AND DELIVERED AT ELDORET ON THIS 29TH DAY OF MAY, 2007.

M. K. IBRAHIM

JUDGE