



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT AT KAKAMEGA**  
**CIVIL CASE 25 OF 2004**

**HEZRON MUKAVWA LUNGAHI ..... PLAINTIFF**

**VERSUS**

**1. JULIUS MAKANCHI**

**2. KHAREBI KATEMBU ..... DEFENDANTS**

**JUDGEMENT**

**HEZRON MUKAVWA LUNG' AHI**, the Plaintiff, sued the two Defendants, **JULIUS MAKANCHI** and **KHAREBI KATEMBU** on 20.3.2004 seeking a permanent injunction to restrain them from trespassing on his land parcel **No. ISUKHA/SHIRERE/1462**. He also sought costs of the suit. According to the affidavit of service by Ambrose Khumwa sworn on 15.10.2007 summons to enter appearance was served on **JULLIUS MAKANCHI** (the 1<sup>st</sup> Defendant) on 27-4-2004 as was also **KHAREBI KATEMBU**, the 2<sup>nd</sup> Defendant. Neither Defendant entered appearance or filed defence.

The suit eventually came up for hearing before me on 21-5-2007. The Plaintiff gave evidence and called no witnesses. He testified that the Defendants entered his land title No. **ISUKHA/SHIRERE/1462** in the year 2003 without his consent and started cultivating it. In the year 2004, the Plaintiff instructed his advocates to give the Defendants notice to vacate and leave the said land. He produced as exhibit No. P1 a copy of a letter dated 24/2/2004 addressed to both Defendants which was said to have been delivered by hand giving notice to them that unless they stopped trespassing on the said land a suit would be instituted for their eviction. Apparently, the Defendants did not vacate and so, on 29.3.2004, the Plaintiff through his advocate, A. M. Momanyi Birundu, filed the suit herein.

The Plaintiff testified that he could not physically remove the Defendants from the said land for fear of breach of peace. He produced as exhibit No. P2, a copy of the title deed. He prayed for costs of the suit.

The suit herein was heard ex-parte as it was not defended. The evidence of the Plaintiff was not controverted. The title deed was prima facie evidence of proprietorship. It is my finding that the Plaintiff established that he was the proprietor of the suit land and that the Defendants were trespassing on it. He is entitled to the order he seeks. I enter judgement in his favour as prayed in prayer (1) of the Plaint. I also give costs of the suit to the plaintiff.

*Dated at Kakamega this 8<sup>th</sup> November, 2007.*

**G. B. M. KARIUKI**

**J U D G E**