

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KERICHO

Civil Case 41 of 2003

JOEL KIPCHIRCHIR KITUR.....PLAINTIFF

VERSUS

DAVID KIMUTAI LANGAT *alias* DAVID CHERUIYOT.....1ST DEFENDANT

DAVID MARITIM.....2ND DEFENDANT

JUDGMENT

The plaintiff filed suit seeking to have the defendants evicted from the parcel of land known as **Kericho/Kapsoit/1646** (*hereinafter referred to as the suit land*) measuring 6.6 hectares. The plaintiff further sought permanent orders of this court to restrain the defendants from entering, remaining or continuing in occupation of the said parcel of land. The plaintiff averred that he was the first registered owner of the suit land. He stated that the two defendants had occupied and used the said parcel of land respectively without his permission or authority. When the defendants were served, they entered appearance but they failed to file a defence. The plaintiff listed the case for formal proof. He served the defendants to attend court during the date that the case was scheduled to be heard. The defendants failed to attend court. Muga Apondi J. upon being satisfied that the defendants were duly served, allowed the plaintiff to proceed with his case in the absence of the defendants. The plaintiff testified before Muga Apondi J. On the 6th of February 2006, this court agreed to take over the proceedings from where it had reached when by Muga Apondi J. had jurisdiction. The plaintiff then closed his case.

In his evidence before court, the plaintiff testified that he had purchased the suit land from one Arap Kiragu in 1962. He testified that after the said sale transaction, he was issued with a title in respect of the suit land. He produced the said title as *plaintiff's exhibit No. 1*. He testified that he was the first registered owner of the said parcel of land. He produced a copy of the extract of the register kept by the Land Registrar Kericho as *plaintiff's exhibit No. 2 (green card)*. He testified that the defendants were occupying a portion of the said parcel of land measuring about 1¹/₂ acres. He further testified that he was using the rest of the land. It was his further testimony that the 2nd defendant was the son of Arap Kiragu while the 1st defendant was the grandson of the said Arap Kiragu. He complained that the defendants had interfered with his quiet possession of the suit land. It was his further testimony that the 1st defendant had even erected a house on the said parcel of land and had threatened the plaintiff with a panga when he attempted to stop him from undertaking the said construction. The plaintiff urged the court to grant him the prayers sought in his plaint. The plaintiff did not call any other witness. He then closed his case.

I have read the plaint filed by the plaintiff. I have also considered the evidence that was adduced by the plaintiff in this case. Although the defendants were served with the summons to enter appearance with a copy of the plaint, they only entered appearance but did not file a defence. This case was therefore heard by way of formal proof after the court was satisfied that the defendants had been duly served to attend court on the day that the case was scheduled to be heard on formal proof. In his evidence, the plaintiff has established that he is the registered owner of all that parcel of land known as **Kericho/Kapsoit/1646** measuring 6.6 ha or thereabout. The plaintiff is the first registered owner of the said parcel of land. He was so registered on the 1st of July 1975. He was issued with a land certificate on the 21st of August

1986. He testified that the defendants had occupied a portion measuring 1¹/₂ acres of the said parcel of land without his permission. He further testified that the 1st defendant had without colour of right erected a house on the said parcel of land. He therefore prayed for this court to grant him an eviction order to have the defendants evicted from the said parcel of land. He further prayed that the defendants be permanently restrained from interfering with his quiet possession and occupation of the suit land.

I have considered the said evidence adduced. The said evidence is uncontroverted. The plaintiff as the owner of the suit land is entitled to quiet possession of the same. He is entitled to occupy the same. The defendants have no right to interfere with the plaintiff's ownership and occupation of the suit land. In the premises therefore, I will enter judgment for the plaintiff against the defendants jointly and severally as prayed in the plaint. Judgment is entered for the plaintiff against the defendants as hereunder:-

(i) The defendants are hereby ordered to vacate the suit land *i.e.* **Kericho/Kapsoit/1646** within thirty (30) days of being served with the order of this court or in default thereof the plaintiff be at liberty to evict the defendants from the suit land.

(ii) The defendants are hereby permanently restrained from entering, remaining or continuing in occupation of the said parcel of land without the permission or authority of the plaintiff.

(iii) The plaintiff shall have the costs of the suit.

DATED at KERICHO this 28th day of March 2006.

L. KIMARU

JUDGE