

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

Civil Suit 338 of 2004

GITHUNGU KIHICO KIMANI.....PLAINTIFF

VERSUS

ANTONY KIHICO.....DEFENDANT

JUDGMENT

The plaintiff, Githungu Kihiko Kimani filed suit against the defendant Antony Kihiko seeking the orders of this court to evict the defendant from **plot No. 108 Maiella** in Naivasha. The plaintiff further prayed for an order of permanent injunction to restrain the defendant from entering, ploughing or any way trespassing into the plaintiff's parcel of land known as **Plot No. 108 Maiella** (*hereinafter referred to as the suit property*). The plaintiff further prayed for costs of the suit. The defendant was served with the summons to enter appearance together with a copy of the plaint. The defendant did not however enter appearance. Interlocutory judgment was entered against the defendant in default of entering appearance. This suit was thereafter listed for formal proof.

At the hearing of the case, the plaintiff testified that he was a police officer while the defendant was his son who was born in August 1980. He testified that the defendant was currently residing on a parcel of land at Maiella which he had inherited from his father. The parcel of land in question is registered as **Maiella/Ndabibi/108**. The suit property measured about $\frac{3}{4}$ of an acre. He testified that after the death of his father in September 1998 and the death of his mother in April 1998, the suit property was divided among the four brothers of the plaintiff. The plaintiff occupied a specific portion of the said parcel of land which is identifiable on the ground. He testified that he planted Napier grass on his portion of land in 1998. However, the defendant had uprooted the napier grass and has generally been a nuisance. The defendant had refused to vacate from the kitchen which the plaintiff had constructed for his own use and had demolished structures which the plaintiff had erected to enable him accomplish his farming activities.

He testified that the defendant had even gone further and sold two of his cows. The plaintiff was forced to pay a sum of Kshs 10,000/= to redeem the said cows from the people that the defendant had sold them to. He testified that although he reported the matter to the police, the police were unable to take action because the defendant proved elusive when the police sought to arrest him. He produced the statement which he wrote when he made the complaint to the police as *plaintiff's exhibit No. 1*. He testified that the defendant had threatened his life and had made his life miserable. The letter threatening the plaintiff was produced as *plaintiff's exhibit No. 2*. The plaintiff testified that he had come to court to seek orders permanently restraining the defendant from going to his homestead. He testified that he had purchased another parcel of land which he wanted the defendant to go and reside in, but the defendant had refused to relocate to the said parcel of land which was purchased for him. The plaintiff testified that in view of the behaviour of the defendant, it would be impossible for him to live in the same compound with the defendant. The plaintiff pleaded with this court to grant him the prayers in his plaint so that he could live in his farm in peace without being disturbed by the defendant.

I have read the pleadings which were filed by the plaintiff in this case. I have considered the evidence that he adduced in support of his case. The said evidence is uncontroverted. The defendant was served with the summons to enter appearance but chose not to enter appearance or file a defence. The plaintiff has testified that the defendant, who is his son, has caused him anguish because of his behaviour of

destroying his crops and selling his animals. The plaintiff further testified that the defendant had threatened him with dire consequences if he continued insisting that he vacates the plaintiff's homestead. The plaintiff testified that he had purchased another parcel of land and which he had instructed the defendant to take occupation of but the defendant had refused to follow his instructions. Instead the defendant has insisted that he would stay at his parents homestead.

I have evaluated the above evidence. It is obvious that the plaintiff and the defendant have a bad relationship. They cannot live together in one house. The plaintiff is the father of the defendant. The defendant is now an adult, twenty six years of age. The defendant is working a matatu tout. He is therefore an adult and is earning a living. He does not depend for his livelihood on the plaintiff. He is leading an independent life. The plaintiff complains that the defendant has without any justifiable cause destroyed his crops and properties on the suit property. He further complains that the defendant sold his cows without his authority or consent. It is apparent from the evidence adduced by the plaintiff, which was uncontroverted, that the defendant is badly behaved and does not follow the instructions of the plaintiff. It is apparent that the defendant does not respect his father, the plaintiff.

The prayers sought by the plaintiff in this case are novel in that it raises the issues of the relationship between a father and his children and further the expectations that a father has on his children and vice versa. It further raises the issues related to the expectation of a son to have a right to occupy the property of his father. Now in the instant case the plaintiff is fed up with the behaviour of the defendant, his son. He no longer wants his son to reside in his house and in his farm. He has bought a separate parcel of land for the defendant which he wants the defendant to occupy. However the defendant is not willing to vacate from his father's house and move to the parcel of land which was bought for him. The plaintiff complains that the defendant's continued stay on the said parcel of land has stressed him especially considering the fact that the defendant had threatened to harm the plaintiff. I read the letter written by the defendant which was addressed to the plaintiff and which was produced as *plaintiff's exhibit No. 2*.

It is clear that the bad blood that exists between the plaintiff and the defendant cannot be easily resolved. The only solution is for them to be kept apart. Since the defendant is now an adult and has a life of his own, I will allow the prayers sought by the plaintiff in this suit. I order that the defendant vacates the suit property and relocate to the parcel of land which was purchased for him by the plaintiff. In the circumstances of this case, I think the plaintiff has discharged his parental responsibilities as regards the defendant. The defendant has no proprietary rights recognised in law on the suit property. The plaintiff requires to live peacefully in his house without being subjected to threats and without having his properties wasted by an ungrateful son.

The upshot of the above is that judgment is entered for the plaintiff against the defendant as hereunder:

- (i) The defendant is hereby ordered to vacate the portion of land owned by the plaintiff in parcel number Maiella/Ndabibi/108 within thirty (30) days after being served with the order of this court or in default thereof the plaintiff shall be at liberty to evict him from the said parcel of land.
- (ii) The defendant, his servants or agents are hereby permanently restrained from entering, ploughing or in any way trespassing into the plaintiff's portion of land comprised in the suit property.
- (iii) Since this is a matter involving family members, there shall be orders as to costs.

DATED at NAKURU this 13th day of July 2006.

L. KIMARU

JUDGE