



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KERICHO

Civil Case 107 of 2005

DAVID KIPLANGAT ROTICH PLAINTIFF

VERSUS

REUBEN KIPKOROS SOI DEFENDANT

JUDGMENT

The plaintiff, **David Kiplangat Rotich** has instituted the present suit against **Reuben Kipkoros Soi** whereby he has sought for the following orders;

- a) **A mandatory injunction restraining the defendant either by himself, or his agents, servants or assignees, representatives or nominees from trespassing into, constructing any structures or erecting any building or in any other way interfering with the plaintiff's quiet use, occupation and enjoyment of all that land known as KERICHO/KAPKURES/207.**
- b) **A declaratory order that the plaintiff is entitled to the exclusive title ownership, occupation, quiet use and enjoyment of the suit land being a bonafide purchaser for value and being the registered proprietor.**
- c) **Costs and interest of this suit.**

The defendant has not defended the suit despite having been served with the summons. When the matter came up for hearing by way of formal proof, the plaintiff gave evidence and detailed how he acquired the property known as **KERICHO/KAPKURES/207** measuring about 5.21 hectares.

According to the plaintiff, the defendant further invited him to contribute money in order for him to acquire a share within Kapkures Farm which was a land buying company. The plaintiff contributed Kshs.5,000/- which would have entitled to him one share and an equivalent of 18 acres which was registered in the name of Arap Chepkwony. The plaintiff therefore referred the matter for arbitration before a panel of elders who made a finding that the plaintiff was entitled to 13 acres. The plaintiff was duly issued with a title following a court order. Subsequently, the defendant who is the son of the original shareholder and allottee of the property started encroaching on the plaintiff's parcel of land. The plaintiff filed a dispute before the Land Disputes Tribunal whereby the verdict of the Tribunal was in his favor.

The plaintiff produced copies of the minutes of the decision by the elders, the Land Disputes Tribunal, the transfer and the certificate of official search to show that he is the registered proprietor of the land known as **KERICHO/KAPKURES/207**.

The plaintiff further stated that the defendant has been interfering with his peaceful occupation of the suit premise through threats of injury should the plaintiff undertake any further developments and acts of trespass.

I have considered the plaintiff's case which was not at all controverted. The defendant did not defend this suit despite the fact that he was served.

The plaintiff produced copies of documents to support the fact that he is the registered proprietor of the suit premises, through purchase and the certificate of official search shows that he is the registered proprietor.

Accordingly, I am satisfied that the defendant has been able to prove his case to the required standard and I hereby enter judgment for the plaintiff as follows: -

- a) *A mandatory injunction restraining the defendant either by himself, or his agents, servants or assignees from trespassing, constructing any structures or erecting any building or interfering with the plaintiff's quiet possession of Title No. **KERICHO/KAPKURES/207**.*
- b) *A declaration that the plaintiff is the registered owner of LR NO. **KERICHO/KAPKURES/207**.*

The plaintiff shall also have the cost of the suit.

It is so ordered.

Judgment read and signed at Kericho on 5th October 2006.

MARTHA KOOME

JUDGE