



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI (NAIROBI LAW COURTS)

Civil Case 1738 of 2002

AVOCADO LINKS LTD .....  
PLAINTIFF

VERSUS

SISTER MARY thro' MUKURU SPORTS  
ASSOCIATION.....DEFENDANT

JUDGMENT

Avocado Links Ltd sued Sister Mary, claiming that through an unregistered group known as “Mukuru Sports Association,” invaded the suit premises and started construction thereon” and the plaintiff prayed the court to restrain them as they are interfering with the plaintiff’s right to property.

The plaintiff therefore prayed for a permanent injunction to “**restrain the defendant by herself, her group or through any person whatsoever from entering, remaining wasting or in anyway interfering with the plaintiff’s quiet enjoyment and proprietary rights over L.R No. 209/13547 Ngong**”.

The plaintiff also prayed for costs of the suit. The defendant failed to file a defence, prompting the plaintiff to ask for judgment in default of defence, however the same was not entered. The plaintiff thereafter took a hearing date and served it on counsel for the defendant who was present on the day of the hearing but did not call any witnesses.

Stephen Kibiego Melly is a Director of the plaintiff company which was allocated the suit premises, L.R No. 209/13547 in 1997 for a lease of 99 years.

The plot of land is situated a long Enterprise Road and the plaintiff paid for it in full and got the title deed which he produced in court as Exh 1.

The plaintiff sold the land in Western Pumps Company in February 2002 and in November of the same year, Stephen was surprised to see some construction work going on in the property. On enquiry he found that it was the defendant, a youth group who started building on the suit premises claiming that the same had been allocated to them by the Chief to use it as a playing and recreational field.

The plaintiff complained that the defendant who has no title or any evidence of ownership is still using the suit premises. He prayed the court to grant an injunction order to get the defendant out of his land, as he did not authorize them to be on his land, and despite having obtained an interlocutory injunction order, the defendant continued to be on his land.

Counsel for the plaintiff filed written submissions and adopted the plaintiff’s evidence. He also reiterated the point that the defendant failed and or neglected to file a defence, despite having entered appearance on 2<sup>nd</sup> December, 2002, through Muthoni Gichohi & Co. Advocates.

The plaintiff’s submissions also referred to the replying affidavit filed by the defendant’s Chairman, Gilbert Okumu, “**in defence**” to the application for injunction which was determined by a consent – order

recorded on 2.3.2005, by Kubo, J.

The consent order granted temporary orders to await the hearing of the suit.

I have considered the plaintiff's evidence on record, which evidence is not challenged and I am satisfied that the plaintiff has proved his claim on a balance of probabilities to the effect that the suit premises belongs to it and further, that the defendant is using and or erected constructions on it without the plaintiff's consent.

I find no defence to the plaintiff's suit. I proceed to grant order as prayed in prayer (a) of the plaint dated 22<sup>nd</sup> November, 2002. I also award the plaintiff costs of the suit.

Dated at Nairobi this 1<sup>st</sup> day of December, 2006.

**JOYCE ALUOCH**

**JUDGE**