

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

Civil Case 87 of 2005

EDWARD K. SANG.....PLAINTIFF

VERSUS

ELIJAH KEBII NGERECHI.....DEFENDANT

RULING

The plaintiff prayed for a temporary injunction to restrain the defendant/her agents and/or servants from entering, remaining and/or in any way interfering with a property known as No. **226 KIROBON FARM** in Keringet area (hereinafter referred to as “**the suit premises**”) pending the hearing and determination of this suit. The plaintiff, in his affidavit in support of the said application annexed documents which showed that on 27/6/1974 he paid Kshs.2,500/- to Kirobon Farmers Limited and became a shareholder of the said land buying company and on 30/1/1976 he was given a plot allotment certificate for the suit premises, a parcel of land measuring 10 acres. On 27/6/1974, he had also paid Kshs.20/- as membership fees of the said company and on 26/9/1975 he paid Kshs.650/- as survey fees and Stamp Duty. The plaintiff has been residing in the suit premises since 1976 and cultivating thereon.

However, in February 2004 the defendant forcefully entered into the suit premises and tilled a portion thereof and planted some crops. He also started building a house without the plaintiff’s consent and has threatened that he will continue with his unlawful occupation and development of the suit premises.

The defendant was served with the summons and the chamber summons herein but did not enter appearance or file any defence thereto. The plaintiff’s application was therefore unopposed.

Prima facie, I am satisfied that the plaintiff has shown that he is the lawful owner of the suit premises and has been enjoying quiet possession of the same since 1976. He therefore merits protection from this court. I therefore issue an order of injunction in favour of the plaintiff to restrain the defendant from doing any further acts of trespass including constructing any house or structure thereon or cultivating the suit premises.

However, as the defendant has been in unlawful occupation since February, 2004 and as the plaintiff has not filed an application for mandatory injunction to compel the defendant to vacate the suit premises and demolish his houses and/or structures, I will not grant that which has not been prayed for.

The defendant will also bear the costs of this application.

DATED, SIGNED & DELIVERED at Nakuru this 16th day of June, 2005

D. MUSINGA

JUDGE

16/6/2005