



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA OF KISII**

Civil Suit 131 of 2004

- 1. WILSON ONCHOKA**
- 2. GEORGE SAROTA**
- 3. JAMES KONIGA..... PLAINTIFFS**

VERSUS

ALLOICE KIMORI DEFENDANT

RULING

The applicant seeks court to order the defence by the Defendant to be struck out and an order he be evicted from the suit land. He also prays for costs.

By a plaint filed in court on 6th September 2004 the plaintiff sought for an order to evict the defendant from land NO.TRANSMARA/MOYOI/9. He also sought for an injunction to injunct him from re-entering the suit land. The plaintiff is a self help grap and in the plaint stated they are the registered owner of the suit land and that since 2003 the plaintiff trespassed into the suit land and erected structures therein.

The plaintiff filed a defence on 15th September 2004. He said in para.3 thereof that he did not trespass on the plaintiffs suit land and that he owns land

No.TRANS MARA/ANGATA – BARINGO/490 which is not even adjacent to the suit land.

The defendant did not file any replying affidavit or grounds of opposition.

He and his counsel did not appear in court during the hearing of the application dispute being served.

I have considered the application.

The plaintiff avers that his land is NO.TRANSMARA/MOYOI/9.

He annexed copy of the title deed which clearly show that the land is Registered in the name of ROBINA NYAKWERIGERIA GROUP. Title deed was issued on 23rd May 2001. The defendant did not even in his defence claim to be the owner of that land.

There is therefore nothing to go for trial. I find this a proper case to strike out the defence.

I therefore allow the application, strike out the defence and enter judgment for the plaintiff as prayed.

Dated 11th July 2005.

KABURU BAUNI

JUDGE

c.c. Mobisa

Mr. Soire for Masese for applicant.

KABURU BAUNI

JUDGE