



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI**

Civil Case 1183 of 1983

JOHN KABERE MUNGAI.....PLAINTIFF

VERSUS

CHARLES KARUGA KOINANGE.....DEFENDANT

JUDGMENT

The plaintiff filed this suit against the defendant seeking vacant possession of land title *NO. KIAMBAA/KANUNGA/376* which the defendant allegedly occupied illegally. He also sought general damages and mesne profits for wrongful possession and use thereto since 1974 as well as costs of the suit and interest thereon.

The plaintiff's case is that the defendant by use of force wrongfully and illegally took possession of the suit premises under the guise of having bought the same from the plaintiff's late father **MUNGAI GICHIA**.

The suit premises were never sold to the defendant. But according to the defendant evidence, the father of the plaintiff had sold to him the suit land in 1974 but he died before he transferred the suit land to him. This evidence is supported by the evidence of DW1 KABIBI MUNGAI the widow of Mungai Gichia and DW4 and DW5 who are brothers of the plaintiff who confirmed that the deceased father Mungai Gichia had sold the suit land to the defendant but died before he transferred the same to the defendant.

After the death of Mungai Gichia the suit premises was by the order of the Court in Kiambu Succession Cause No. 6 of 1976 registered in the names of the deceased's sons namely:

- (i) John Kabere Mungai
- (ii) Gichia Mungai A
- (iii) Gichia Mungai B
- (iv) George Mungai
- (v) Wamuti Mungai

The five brothers own the suit land as tenants in common. At least 4 of the tenants had agreed to the defendant being on the land.

There are various issues raised by the defendant. First is whether the plaintiff has the locus standi to institute this suit.

If the answer to this is in the negative then the plaintiff's suit will not stand. Counsel for the defendant submitted that the suit land is registered in the names of the plaintiff and his 4 brothers. The plaintiff is not the sole proprietor of the parcel of land.

In order for the plaintiff to acquire the capacity to institute this suit in his name, he had to seek the consent of his 4 brothers to institute the suit by virtue of Order 1 Rule 8 of the Civil procedure Rules. A consent and/or authority of the court is required. Since no authority was given, and since no notice was issued to other joint owners the plaintiff had no capacity to institute this suit. Since the other brothers had consented to the defendant being on the suit land, the plaintiff ought to have waited until the suit land is subdivided and each of them given his portion so that he could only institute a suit in respect of the portion registered in his name.

For the above reasons the plaintiff's claim fails and the suit is dismissed with costs to the defendant.

Delivered and dated at Nairobi this 12th day of October 2005.

P. J. RANSLEY
JUDGE