

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KERICHO

CIVIL SUIT NUMBER 29 OF 2003

MICHAEL MACHARIA MWANGI..... PLAINTIFF

VERSUS

STEPHEN KIPSIGEI SOI DEFENDANT

JUDGMENT

The Plaintiff, Michael Macharia Mwangi, filed suit against the Defendant, Stephen Kipsigei Soi seeking an eviction order of the Defendant from all that parcel of land known as Kericho/Kunyak Settlement Scheme/160. The Plaintiff averred in the plaint filed herein that he was the registered owner of all that parcel of land known as Kericho/Kunyak Settlement Scheme/160 having inherited the said parcel of land from his uncle, the late Muchiri Mukinyi. The Plaintiff further averred that the Defendant, without the plaintiff's consent, had unlawfully entered into the said parcel of land and erected structures thereon. The Defendant was duly served with summons to enter appearance together with a copy of the plaint. After the Defendant was served, he failed to enter appearance within the requisite period. Interlocutory judgement was consequently entered against him on the 25th of June, 2003. The Defendant appointed Msrs. C. K. Korir and Company Advocates to act on his behalf in this suit on the 27th of November, 2003. No defence was however filed to the plaintiff's suit. Even though the said firm of Advocates was aware that interlocutory judgment had been entered, and further that this case had severally been listed for formal proof, the Defendant did not bother to make an application to set aside the interlocutory judgment entered.

Mr. Korir, the Advocate for the Defendant applied successfully to adjourn the hearing of this case on formal proof on the 27th of November, 2003 by claiming that he had then just been instructed to act for the Defendant and needed time to peruse the file and make an appropriate application. On the 10th of June, 2004 when this suit was again listed for formal proof, Mr Korir again sought an adjournment which was reluctantly granted by this court. The Defendant was however warned to regularize his pleadings before the 26th of October, 2004 when this case was fixed for hearing. The Defendants was further put on notice that this court would hear the Plaintiff's case ex-parte if the Defendant would not have made an appropriate application to set aside the interlocutory judgment and file a defence to the Plaintiff's suit. On the 26th of October, 2004 it emerged that the Defendant had still not made any effort to regularize his pleadings. This court put into consideration the Defendant's conduct in the circumstances of this case and ordered that the Plaintiff proceeds with his case on formal proof. The Defendant's Advocate, Mr Korir, being properly on record for the Defendant was allowed to cross-examine the Plaintiff.

In his sworn testimony before court, the Plaintiff testified that he was the registered owner of all that parcel of land known as Kericho/Kunyak Settlement Scheme/160. The plaintiff produced the title in respect of the said parcel of land as Plaintiff's exhibit number 1. The said title was issued to him on the 9th of October, 2001. The Plaintiff testified that the said parcel of land measuring about thirteen acres, previously belonged to his uncle Muchiri Mukinyi who was now deceased. The Plaintiff further testified that he obtained letters of administration for his late uncle's estate and was thereafter registered as the owner of the said parcel of land on transmission. The confirmation of the letters of administration issued to the Plaintiff in Kericho Senior Resident Magistrates Court succession cause number 56 of 1989 was produced in evidence as Plaintiff's exhibit number 3. To confirm that he had been properly registered as the owner of the said parcel of land the Plaintiff produced the green card for the said parcel of land as plaintiff's exhibit number 2.

The Plaintiff testified that after he had obtained the title to the said parcel of land, he went to the land

only to find that the Defendant was in illegal occupation of the same. The Plaintiff admitted that he did not know when the Defendant illegally trespassed into the said parcel of land. The Plaintiff however, insisted that the Defendant entered the said parcel of land in the year 2000. The Plaintiff further testified that he paid all the loan amount due in respect of the said parcel of land. The Plaintiff further testified that he was not aware that another title deed for the said parcel of land had been issued to the Defendant on the 2nd of February, 1993. The Plaintiff urged this court to order the Defendant who is in illegal occupation of his land be evicted therefrom. The Plaintiff further prayed for the costs of the suit. The Plaintiff then closed his case. No evidence was offered by the Defence.

I have considered the evidence adduced by the Plaintiff in this case. The issue for determination by this court is whether the Plaintiff has established that he is the owner of the said parcel of land on a balance of probabilities as to entitle him to the orders of eviction sought. In his evidence, the Plaintiff has testified that he is the registered owner of all that parcel of land known as Kericho/Kunyak Settlement Scheme/160. He produced in evidence the title deed in respect of the said parcel of land registered in his name. He also produced the green card showing that he is the owner of the said parcel of land as reflected in the records at the Lands Office, Kericho. The Plaintiff testified that he inherited the said parcel of land from his late uncle Muchiri Mukinyi. He produced in evidence a copy of the confirmation of the grant of letters of administration issued by the Senior Resident Magistrate's Court at Kericho in the **Senior Resident Magistrate's Court Succession Cause number 56 of 1989**. The Plaintiff testified that he paid all loan due in respect of the said parcel of land.

On evaluating the evidence adduced by the Plaintiff, which evidence was not controverted, I do find that the Plaintiff has established on a balance of probabilities that he is indeed the owner of the parcel of land known as Kericho/Kunyak Settlement Scheme/160. Having established that he is the owner of the said parcel of land, the Plaintiff is entitled to exercise his proprietary rights of possession over the said parcel of land. The Plaintiff has testified that he has been prevented from taking occupation of the said parcel of land by the Defendant who at unknown date trespassed into the said parcel of land and erected therein structures. The Plaintiff testified that the Defendant having trespassed into his said parcel of land, should therefore be evicted. After analyzing the evidence adduced by the Plaintiff I do find that the Defendant entered into the said parcel of land without the consent of the Plaintiff. He is therefore a trespasser. The Plaintiff has sought the order of this court to evict the Defendant from the said parcel of land. It is the finding of this court that the Defendant cannot resist the Plaintiff's claim.

The Defendant is therefore ordered to vacate from the suit land, Kericho/Kunyak Settlement Scheme/160 within thirty days after being served personally with the decree of this court in default thereof an eviction order shall issue evicting the Defendant from the suit land.

The Plaintiff shall have the costs of this suit.

DATED at KERICHO this 29th day of October 2004

L. KIMARU

AG JUDGE