



**REPUBLIC OF KENYA**

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

**civ case 1842 of 02**

**DEREK WILLIAM PEMA & ANOTHER.....PLAINTIFF**

**VERSUS**

**KIRIGA MWANGI & ANOTHER .....DEFENDANT**

**JUDGMENT**

By a plaint filed in court on 23rd December, 2002, the plaintiff's sued the 2 defendants jointly and severally seeking orders as per the plaint which was subsequently amended vide amended plaint dated 13th January, 2003, filed in court the same day.

The prayers in the amended plaint remained the same except for the description of the second defendant as "the Assistant Chief of Ngara West". This appears in para 6 of the amended plaint.

None of the plaintiffs entered appearance. The suit premises is LR No. 209/1911 currently registered in the names of one Alfred John Pema, now deceased, and Alfred John Pema a brother of the deceased John Pema, who resided overseas.

The 1st plaintiff is the son of the said Alfred John Pema (deceased). The 2nd plaintiff, advocate of the High Court of Kenya, holds a power of attorney from the second plaintiff who resides overseas.

The suit premises has a residential house, which the family of the 1st plaintiff used to occupy until the death of their father, then they moved out, leaving the house empty. The 1st plaintiff who gave evidence in court testified that his father who was one of the registered proprietors of the suit premises died on 8th January 1993. The 1st plaintiff is the administrator of his late father's estate. He holds a Grant of Probate which he produced in court as an exhibit. He also produced as Ex.2, a copy of a Power of Attorney his uncle, the co-registered proprietor of the property gave to the second plaintiff.

The plaintiff explained that the family moved out of the suit premises because of insecurity, and from then on, it remained empty and was badly vandalized by unknown people. At some point, the plaintiff explained, his uncle returned from Canada, and they valued the property with a view to selling it. They were, however, surprised to find that somebody, to them was building a wall around the property. He identified the person as the 1st defendant when he approached and the latter directed him to go and ask the area chief.

The plaintiff wrote to his advocate, a letter he produced as Ex.3 in court. He also produced the original title deed of the property. It was in his grandmother's name, but subsequently transferred to his father and uncle. As a holder of a Grant of Probate of his father, he is now one of the owners of this property. The plaintiff produced the photos he took of the suit premises where the defendants were constructing a roof and a fence. He produced them in court as exhibits.

The defendants never entered appearance and also never turned up in court for the hearing with the result that the plaintiff's claims were not disputed. I therefore find judgment for the plaintiffs against the defendants jointly and severally, as prayed in the amended plaint at paragraphs a,b,c,d,e and f.

**Dated at Nairobi this 10th day of July, 2003.**

**JOYCE ALUOCH**

**JUDGE**