

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MOMBASA
CIVIL CASE NO. 1324.00

HANNAH WAIRIMUPLAINTIFF
VERSUS
WANJIRU MUCHIRIDEFENDANT

JUDGMENT

The Plaintiff has sued the Defendant herein for damages in Trespass and permanent injunction to restrain the said Defendants her agents and or employees from trespassing on Land parcel No. LOC.

16/KIGORO/881 In her evidence the plaintiff says that she had always cultivated and raised crops on LR NO.LOC.16/KIGORO/881 since 1978. She says her father owned LR NO.LOC 16/KIGORO/213 which was eventually subdivided into two plots being LOC.16/KIGORO/880 and 881

The land extracts produced shows that Plot No.881 is registered in the name of **GRACE MUGURE GUKUI** her stepmother then later transferred to **STANLEY MUCHIRI MWANGI** a person she does not know.

She says that she planted 2000 bushes of tea on that land which in April 2000 the Defendant entered into the same land cut all trees and tea bushes therein . She used to get KShs.800/= p.m. and an annual bonus of 17,000/= p.a. from the tea. She says the destroyed tea amounted to KShs.50,000/= which she claims from the defendant.

From this evidence I find that the plaintiff had possessory right to this land as this claim is not controverted. The only question is whether there was trespass.

In law trespass to land is an entry in the possession of the plaintiff or remaining upon plaintiff's land without lawful justification. The plaintiff must have had present right to possession which I think in this case without any controverting evidence of PW1 I accept as having been so. Normally a licensee or a mere lodger cannot maintain an action in trespass.

The action of trespass and the damage arising from it entitles plaintiff to damages to put the plaintiff where he would have been had the damage not occurred.

I therefore award damages in the amount of kshs.50,000/= as value of the damage but it must be borne in mind that this was actually in form of special damages which ought to have been specifically pleaded and proved. In this case it was proved but not specifically pleaded. I have however used my discretion and vestigial powers to allow it for purposes of substantial justice.

As for general damages for trespass, I award 150,000/=. There will be a total award of kshs.200,000/= plus costs and interest.

Delivered this 20th day of March 2000

A. I. HAYANGA

JUDGE

Read to Mr. Juma for plaintiff

N/A for defendant

A. I. HAYANGA

JUDGE