



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**CIVIL CASE NO. 1477 OF 2000**

MALVI INVESTMENTS LTD ..... PLAINTIFF

VERSUS

NEWTON IRUNGU & 8 OTHERS .....DEFENDANTS

**J U D G E M E N T**

The plaintiff Malvi Investments Ltd sued the 9 defendants jointly and severally seeking an order for eviction from the suit premises being LR No.209/12824. The plaintiff also sought

***“a permanent injunction restraining the defendants, their servants and agents from trespassing upon the suit property (L.R. No.209/12824) or interfering with it whatsoever”.***

The plaintiff prayed the court to direct the OCS Pangani Police Station to supervise the eviction and finally was a prayer for general damages and costs of the suit.

The court record shows that summons to enter appearance was served on all the defendants but none of them entered appearance or filed a defence. The plaintiff did, by a request for Judgement dated 4th October, 2000, requested for judgement against all the defendants in default of appearance and defence, and the same was duly entered by the Principal Deputy Registrar on 13th October, 2000.

The plaintiff secured a date for formal proof. I nevertheless directed that a fresh date for formal proof be secured from the Registry, which was done and served on the defendants. On the second date of the hearing one of the defendants turned up, but as there was already an interlocutory judgement against him, he did not take part in the proceedings. The plaintiff testified that he knows the 9 defendants who are occupying his piece of land illegally. He produced a certificate of title to his land which belongs to his company Malvi Investments Ltd.

He said that the defendants have been on his land for 3 years without his permission. That he commissioned auctioneers to remove them but because he did not have a court order, he was arrested and taken to court for Malicious Damage to property. This was damage done to the defendants' kiosks.

The police made the plaintiff and the defendants enter into a Memorandum of Understanding whereby the plaintiff was to pay the defendants some compensation to enable the suit against the auctioneers to be withdrawn. On their part the defendants were supposed to move away from the suit premises. The plaintiff produced the Memo of Understanding and also said that he paid Kshs.180,000/= to enable the defendant to move out, but 8 have still refused to move out, except for one called Nicholas Gakuu. The letter Nicholas wrote was produced as Ex.2 in court. The plaintiff produced a copy of the proposed plan of the development he wishes to undertake on this plot. He prayed for an order for eviction and damage.

From the evidence adduced on record I am satisfied that the suit premises belongs to the plaintiff company. I am also satisfied that both the plaintiff and the defendant entered into a compromise in the form of a Memorandum of Understanding and it was the defendants who breached the same. For this reason I am satisfied that the plaintiff has proved his case on a balance of probabilities and

I find judgement for the plaintiff against the defendants jointly and severally as prayed in the plaint. I proceed to grant prayers in terms of paragraph 9(a), (b), (c), (e) and (f). I have not awarded any general damages because though prayed in the plaint, no evidence was adduced to mitigate this head.

These are the orders of the court.

Dated at Nairobi this 13th day of December, 2000.

JOYCE ALUOCH

PUISNE JUDGE