



**REPUBLIC OF KENYA**

**ENVIRONMENT AND LAND COURT**

**AT KITALE**

**LAND CASE NO. 55 OF 2018**

**LEAH CHELULEI TELE.....PLAINTIFF**

**VERSUS**

**GLADYS MUTONYI SIMIYU.....DEFENDANT**

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

1. In the plaint dated **23/5/2018** filed in this suit the plaintiff seeks the following prayers:-

**a. An order of declaration holding that the defendant is a trespasser on part of Land Parcel No. Kimondo/Kimondo Block 1/Kundos/75.**

**b. An order of permanent injunction, restraining the defendant, her agents, servants, assigns and/or any other person acting on her behalf, or claiming interest through her from entering, alienating, invading, constructing, cultivating, leasing, trespassing on, selling, claiming, occupying, developing and or dealing in any manner with the plaintiff's 0.15 (decimal one five) of an acre or any part of Land Parcel No. Kimondo/Kimondo Block 1/Kundos/75.**

**c. Costs of this suit and interest.**

**d. Any other relief this honourable court may deem just and fit to grant.**

2. The hearing of this suit took place on **24/9/2018** after the court became satisfied that service of plaint and summons had been effected upon the defendant. The affidavit of **Raphael Nyongesa Simiyu** a court process server dated **30/5/2018** was filed into the record. It shows that service of the summons to enter appearance, plaint and other documents in the suit was effected upon the defendant on **30/5/2018**. Despite having been served, the defendant never filed any memorandum of appearance or defence. She also never appeared at the hearing when this case was listed for formal proof.

3. The plaintiff alone testified in the suit. According to the plaint and the plaintiff's evidence her claim is that she is the absolute and registered owner of **Land Parcel No. Kimondo/Kimondo Block 1 / Kundos/75**.

4. The plaintiff avers that the defendant has trespassed upon the suit land and destroyed the plaintiff's crops, threatened the plaintiff's life and deprived her of her peaceful occupation of the suit land. The plaintiff has reported the same to the Assistant County Commissioner and the Ward Administrator and the Agricultural Extension Officer.

5. The plaintiff adopted the statement that she filed in this suit on **28/5/2018** as her evidence-in-chief. I have read the said statement and considered the oral evidence of the plaintiff.

6. The plaintiff produced the original title in respect of the suit land as an exhibit. It shows that the land measures **2.967 ha** and bears her name. I am satisfied that she is the rightful owner thereof.

7. The plaintiff also produced a copy of a letter dated **11/10/2017** showing that the matter had been raised with the Assistant County Commissioner, Endebess Division and a letter dated **2/3/2018** showing that the matter had been raised with the local Chief. Photographs of the structure that is said to have been put up on the suit land by the defendant were also produced. The demand letter dated **7/2/2018** showing that the plaintiff's advocate had asked that the defendant do vacate from the suit land and demolish her structures within 14 days was also produced in evidence.

8. The defendant has not filed any reply. I find that the plaintiff has proved her claim against the defendant on a balance of probabilities. I

hereby grant the plaintiff judgment as prayed in the plaint dated 23<sup>rd</sup> May 2018.

It is so ordered.

Dated, signed and delivered at Kitale on this 2<sup>nd</sup> day of October, 2018.

**MWANGI NJOROGE**

**JUDGE**

**2/10/18**

**2/10/2018**

Coram: Before Hon. Mwangi Njoroge, Judge

Court Assistant - Picoty

Mr. Kibii holding brief for Bungei for plaintiff

N/A for the defendant

**COURT**

Judgment read in open court.

**MWANGI NJOROGE**

**JUDGE**

**2/10/2018**