



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT MERU**  
**E & L NO. 177 OF 2013**

GENESIO MURUNGI M'NDIRI.....PLAINTIFF

VERSUS

JULIUS ADIEL GITONGA.....DEFENDANT

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

The plaintiff in this suit prays for judgment against the defendant for:

- (a) ***An order of removal of Caution over land parcel MWIMBI/MURUNGI/563.***
- (b) ***Permanent injunction restraining the defendant whether by himself or his servants or agents or otherwise from remaining on or continuing in occupation of the suit property.***
- (c) ***An order evicting the defendant from land title No. MWIMBI/MURUNGI/563 and same be effected by assistance of the O.C.S., Ntumu Police Station.***
- (d) ***Costs of this suit together with interest at such rate and for such period of time as this Honourable Court may deem fit to grant***
- (e) ***Any other or further relief as this Honourable Court may deem appropriate.***

The defendant having been served with copies of plaint, verifying affidavit, list of witnesses, plaintiff's statement, list of documents and summons to enter appearance and having failed to enter appearance and/or file defence within the stipulated time, and upon request for judgment by the advocates for the plaintiff, M/S Kiautha Arithi & Co. Advocates, judgment was entered for the plaintiff against the defendant on 15th January, 2014.

Formal proof proceedings took place on 21.5.2014 when the Court was informed that the defendant had been properly served with the apposite hearing notice.

The plaintiff in his evidence informed the Court that he owned Land Parcel No. Mwimbi/Murungi/563. As proof of ownership he showed the Court the title thereof. He also told the Court that he had intended to sell one acre to the defendant out of the suit land at the price of Kshs.420,000/=. The defendant paid Kshs.180,000/=. He took possession and refused or failed to pay the balance. As a result the land could not be transferred to the defendant.

On 23.1.2009, the parties had intended to enter into an agreement but instead the defendant took him to the police station where he was locked up and his papers were impounded. As the defendant had told the plaintiff that he had instituted a case against him at Chuka Law Courts, the plaintiff went to the

Law Courts to inquire about the existence of such a case but found out that it did not exist

Later on, the plaintiff found out that the defendant had placed a caution against the suit land. He produced a search as proof of existence of the caution. He also produced a letter showing that the defendant had been summoned by the land registrar over the caution but he ignored the summons.

The plaintiff claimed that the defendant had destroyed his property and produced a report by ROMA VALUERS, ENVIRONMENTAL AND PROPERTY CONSULTANTS showing that the defendant had destroyed property worth Kshs.474,958/=. These being formal proof proceedings, and the defendant having failed to attend court, this figure stands unchallenged.

A demand letter dated 18.7.2013 written by the plaintiff's advocate requiring the defendant to vacate the suit land and to pay the sum of Kshs 474,958 being the assessed amount of the plaintiff's damaged property plus Kshs.3000/= being fees in respect of the demand notice was produced by the plaintiff.

The plaintiff prayed for judgment against the defendant as enumerated in his plaint. He also prayed that he be compensated for the damage caused to his property by the defendant.

I find that the plaintiff has satisfactorily formally proved his case. I note that though the defendant had paid the sums of Kshs.180,000/= to the plaintiff, he had forcefully moved into the plaintiff's land and has continued to be in occupation and use. Had he not done so, I would have ordered that this sum of money be deducted from the sum of Kshs.474,958 claimed by the plaintiff as compensation for his damaged property. In the circumstances, I will not do this.

I give judgment against the defendant in the following terms:

1. ***I order that the caution placed over Land Parcel NO.MWIMBI/MURUNGI/563 by the defendant be removed forthwith.***
2. ***I issue a permanent injunction restraining the Defendant whether by himself or his servants or agents or otherwise from remaining on or continuing in occupation of Land Parcel NO.MWIMBI/MURUNGI/563.***
3. ***An order is issued to evict the defendant from Land Parcel NO.MWIMBI/MURUNGI/563 and this order be implemented with the assistance of the O.C.S., NTUMU POLICE STATION.***
4. ***I award costs and interest to the Plaintiff from the date of this judgment.***
5. ***Under prayer (e) in the plaint, I award the sum of Kenya shillings four hundred seventy four thousand, nine hundred and fifty eight (Kshs.474,958/=) to the plaintiff in damages as compensation for his property destroyed by the Defendant.***

It is so ordered.

**Delivered in open Court at Meru this 2nd day of July, 2014 in the presence of :**

Cc. Daniel

Parties Absent

Advocates for parties Absent.

**P. M. NJOROGE**

**JUDGE**