



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT OF KENYA AT ELDORET**

**E & L CASE NO. 385 OF 2016**

**ANDREW KIPKOECH KURGAT....PLAINTIFF**

**VERSUS**

**JOSEPH KIPLAGAT.....DEFENDANT**

**JUDGMENT**

**Andrew Kipkoech Kurgat (hereinafter referred to as the plaintiff)** has come to court against **Joseph Kiplagat (hereinafter referred to as the defendant)** claiming that he is the lawful registered owner of that Plot No. 16 situated at Chembulet Shopping Centre, Moiben measuring 50 ft x 100 ft. That he also owns Plot No. 29 measuring 25 ft x 50 ft and Plot No. 35 and that he also owns 10 acres of land situated at Tembelio/Kimoning Block 1(Cheburbur)/344.

The plaintiff avers that on or about May, 216, the defendant unlawfully entered and constructed structures on his Plot No. 16 without his consent and therefore has suffered loss and damages and the damage is still going on.

The plaintiff prays for a permanent injunction to restrain the defendant and/or his servants, agents and/or his representatives from interfering and/or in any other manner dealing with the plaintiff's plot.

He further prays for an eviction order against the defendant and the demolishing of all the structures put on his plot by the defendant, mesne profits and costs and interest of the suit. Demand and notice of intention to sue has been issued in vain. There is no other suit pending and there have been no other previous proceedings in any court between the parties herein over the same subject matter. This Honorable court has jurisdiction.

The plaintiff states in his evidence in chief that he is a resident of Cheburbur Farm and he is one of the original members of that farm. That he has among others, three center plots at Chembulet Centre namely;

1. Plot No. 16 measuring 50 ft x 100 ft.
2. Plot NO. 29 measuring 25 ft x 50 ft and
3. Plot No. 35.

That he also has land of 10 acres at Cheburbur farm namely Tembelio/Kimoning Block 1(Cheburbur)/344. That sometimes in May 2016, one by the name Josephat Kiplagat erected structures on his Plot No. 16 without his consent. That he has reported to the area Chief and the District Officer but nothing has been done. That he is apprehensive that the said intruder is likely to deny him the peaceful enjoyment of his property. That he now seeks the court's intervention so that the said intruder be evicted and the structures erected demolished. He also prays for costs and sense profit. That he has instructed the firm of M/s Chepkwony & Company Advocates to represent him.

The defendant was served but never entered appearance and never filed defense and therefore the claim is not denied and the evidence is not controverted. I have considered the pleadings, evidence and the plaintiff's submissions and do find that he has satisfied this court on a balance of probabilities that he is the owner of Plot No. 16 at Cheburbur market.

I do issue an eviction order against the defendant and the demolishing of all the structures put on his plot by the defendant, however, the defendant to be given a notice of sixty (60) days before any eviction is carried on and demolition of structures. Further, I do issue a permanent injunction to restrain the defendant and/or his servants, agents and/or his representatives from interfering and/or in any other manner dealing with the plaintiff's plot. Costs and interest of the suit to the plaintiff. Orders accordingly.

**Dated, signed and delivered at Eldoret this 13<sup>th</sup> day of July, 2018.**

**A. OMBWAYO**

**JUDGE**