



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT KITALE**

**ELC CASE NO.136 OF 2016**

**PHILIP KIPTOO NGASAKI.....PLAINTIFF**

**VERSUS**

**ANNE TENAI.....DEFENDANT**

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

1. By a plaintiff filed on **14/9/2016**, the plaintiff commenced this suit against the defendant claiming that the defendant has wrongfully and without any justifiable cause trespassed and encroached onto a portion of the plaintiff's land that is Title **No. Moi's Bridge/Moi's Bridge Block 12 (Ex Cullen)/109** and is now occupying one quarter of an acre of the said land.
2. The plaintiff claims that by virtue of the defendant's act, he has been blocked and prevented from occupying and utilizing, his land peacefully and his business projects have since stalled, whereupon he has suffered substantial financial loss and damage.
3. The plaintiff therefore prays for a declaration that he is the rightful owner of the whole of the suit land and that an order of eviction issue as against the defendant and that also an injunction restraining the defendant from trespassing on the suit land do issue.
4. Only the plaintiff testified at the formal proof. The plaintiff produced copies of documents to support his claim. "**PEXH1**" is a copy of a Sale agreement showing that the plaintiff purchased the suit land from one John Kiplagat Tenai. It is dated **26/1/1997**. It is signed by three witnesses.
5. "**PEXH2**" is a copy of a clearance certificate **No.109** issued to the Land Registrar, Uasin Gishu which confirms that the plaintiff is the owner of plot **No.109** and that he may be issued with a Title deed for the said plot.
6. "**PEXH3**" is an area list showing that the plaintiff was listed as owner of plot 109 while "**PEXH4**" is a copy of a title deed for the suit land, now in full referred to as **Mois Bridge/Moi's Bridge Block12/Ex Cullen/109**. It shows that it was issued on **23/4/2014** to the plaintiff.
7. "**PEXH5**" is a copy of a letter from Kidiavai & Co. Advocates demanding among other things that the defendant do stop trespassing and/or interfering with the plaintiff's quiet possession and use of the suit land.
8. The suit went undefended. There was no evidence from the defendant or even a written statement of defence to controvert the plaintiff's claim. Nevertheless, I find that the plaintiff has established his case on a balance of probabilities.

9. I therefore enter judgment for the plaintiff against the defendant in terms of prayers **No.1** and **2** of the plaint dated **8<sup>th</sup> July 2016**. The defendant shall also bear the costs of the suit.

**Dated, signed and delivered at Kitale on this 24<sup>th</sup> day of August, 2017.**

**MWANGI NJOROGE**

**JUDGE**

**24/8/2017**

Before - Mwangi Njoroge Judge

Court Assistant – Isabellah/Picoty

Mr. Bisonga for Plaintiff

Judgment read in open court.

**MWANGI NJOROGE**

**JUDGE**

**24/8/2017**