



REPUBLIC OF KENYA

IN THE ENVIRONMENT & LAND COURT AT KERICHO

CIVIL SUIT NO. 30 OF 2011

JOHNSTONE K. CHERUIYOT..... PLAINTIFF

VERSUS

PETER KOSKE..... 1ST DEFENDANT

HEZRA CHERUIYOT.....2ND DEFENDANT

EDWIN KEMBOI.....3RD DEFENDANT

EDWIN KIPKIRUI BII.....4TH DEFENANT

JEREMIAH KORIR LANGAT.....5TH DEFENDANT

JOSEPH KIPKIRUI KORIR.....6TH DEFENDANT

JUDGMENT

(Suit for possession of premises and mesne profits; no defence filed by defendants; defendants vacating the premises before hearing of the suit; plaintiff awarded mesne profits and order of permanent injunction)

The plaintiff commenced this suit by way of plaint filed on **24 May 2011**. He pleaded that he is the proprietor of a commercial plot described as **Plot No. 90** situated within Chesinende Township. His case is that about the month of June 2009, the defendants moved into the plot and erected temporary structures. In the suit, the plaintiff sought a declaration that he is entitled to exclusive possession of the land, an eviction order, mesne profits, and costs of the suit.

No defence was filed by the defendants and on **30 September 2016**, it was confirmed that the defendants had moved out of the premises. On the day, the plaintiff stated that he would wish only to pursue his claim for mesne profits. At the hearing of the suit, the plaintiff did give evidence that the defendants moved into his property in **June 2009** and erected some six shops made of timber. The rent collected from these shops was a total of Kshs. 6,000/= per month. He testified that the defendants moved out of the premises on **15 September 2015**. Mr. Ngetich for the defendants did not cross-examine the plaintiff on this evidence.

As stated earlier, the plaintiff's claim is now restricted to mesne profits only, the defendants having moved out of the suit land. The plaintiff's evidence that the defendants used to collect a sum of Kshs. 6,000/= per month is not contested. The defendants have also not disputed that they remained in the plaintiff's premises from **June 2009** to **September 2015**. This is a period of 76 months. The mesne profits

lost by the plaintiff is the sum of Kshs. 6,000/= for the period of 76 months which is Kshs. 456,000/=. I award the plaintiff the sum of Kshs. 456,000/= as mesne profits. The plaintiff is also entitled to a permanent injunction as against the defendants and I give him this order. I also award the plaintiff's costs of the suit in the lower scale since no defence was filed.

In summary I enter judgment for the plaintiff and make the following orders :-

1. A permanent injunction is hereby issued stopping the defendants from entering or in any other way interfering with the plaintiff's quiet possession of the **Plot No. 90** situated in Chesinende Township.
2. The plaintiff is hereby awarded the sum of Kshs. 456,000/= as mesne profits jointly and/or severally against the defendants. The said sum to accrue interest from the time of filing suit to the date of payment.
3. The plaintiff is awarded the costs of the suit in the lower scale jointly and/or severally as against the defendants.

Judgment accordingly.

Dated, Signed and delivered on this 29th day of April, 2016

MUNYAO SILA

JUDGE

ENVIRONMENT AND LAND COURT

PRESENT:

Mr. Migiro for the plaintiff

No appearance on part of Mr. Weldon Ng'etich for the defendants

Court Assistant: Mr. Kenei