



**REPUBLIC OF KENYA**

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

**E&L 424 OF 2012**

**Formerly HCC 57 of 2008**

**RUSY JESEREM KIRUI.....PLAINTIFF**

**VS**

**FRANCIS CHEPSIROR .....DEFENDANT**

**JUDGEMENT**

The plaintiff in this suit has sued the defendant seeking the following prayers :-

- (a) An order do issue to evict and/or forcefully remove the defendant by himself his servants and/or agents from the plaintiff's suit parcel of land L.R No. Moi's Bridge/Sirikwa Block 2 (Ziwa) 540 measuring 2.49 Hectares.
- (b) An order permanently restraining the defendant by himself his agents and/or servants from further trespassing onto encroaching and/or in any other manner dealing with the plaintiff suit parcel of land L.R No. Moi's Bridge/Sirikwa Block 2 (Ziwa) 540 measuring 2.49 hectares.
- (c) Mesne profits.
- (d) Costs of this suit.
- (e) Any other relief that this Honorable Court may deem fit to grant.

In her plaint, filed on 12 May 2009, the plaintiff has pleaded that she is the proprietor of the land parcel Moi's Bridge/ Sirikwa Block 2 (Ziwa) 540 measuring 2.49 Hectares. She has pleaded that on or about 10/07/2004, the defendant trespassed and encroached into 1/2 of an acre of the suit land and has forcefully occupied the same. She has pleaded that owing to the illegal occupation, the defendant has cultivated maize and has obtained profits by harvesting 15 bags of maize valued at about Kshs. 15,000/= every year. The plaintiff has thus sought the prayers set out above.

Upon service of summons, the defendant never entered appearance. Neither has the defendant filed a Statement of Defence.

This matter proceeded before me on 30 May 2013. The defendant was served with the hearing date but did not appear at the hearing. The matter then proceeded with the plaintiff being the sole witness.

In her rather brief but precise evidence, the plaintiff stated that she is the owner of the suit land and produced the Certificate of Title to the suit land. The Certificate shows that the plaintiff is the sole

proprietor of the suit land, having become so registered on 2 March 2000. The plaintiff stated that the defendant entered and occupied 1/2 of an acre of the suit land and has been cultivating it for seven years. She asked that the defendant be removed from the land. No evidence was led on the issue of mesne profits.

I have considered the pleadings and the evidence of the plaintiff. The same is uncontroverted. There is no doubt that the plaintiff is the owner of the suit land as demonstrated by the Certificate of Title to the suit land produced in evidence. By dint of being owner, she is vested with all proprietary rights including the right of exclusive possession. Her rights are set out in Section 25 of the Land Registration Act, Act No.3 of 2012 which provides as follows :-

*S. 25. (1) The rights of a proprietor, whether acquired on first registration or subsequently for valuable consideration or by an order of court, shall not be liable to be defeated except as provided in this Act, and shall be held by the proprietor, together with all privileges and appurtenances belonging thereto, free from all other interests and claims whatsoever, but subject—*

*(a) to the leases, charges and other encumbrances and to the conditions and restrictions, if any, shown in the register; and*

*(b) to such liabilities, rights and interests as affect the same and are declared by section 28 not to require noting on the register, unless the contrary is expressed in the register.*

*(2) Nothing in this section shall be taken to relieve a proprietor from any duty or obligation to which the person is subject to as a trustee.*

There is no defence and no counterclaim filed by the defendant to demonstrate that he has any rights over the suit land.

In the circumstances I have no doubt that the plaintiff is entitled to the prayers sought in the plaint save for the claim on mesne profits for which no evidence whatsoever was led. I allow prayers (a) and (b) of this suit and order the defendant to forthwith vacate the land parcel Moi's Bridge/Sirikwa Block 2 (Ziwa) /540 and no later than 7 days upon service of the decree/judgment herein. If he fails to so vacate, the plaintiff is at liberty to move the court for an order of eviction. I also issue an order of permanent injunction restraining the defendant from any interference with the suit land either by himself or servants/agents or assigns.

The plaintiff shall also have costs of the suit

It is so ordered.

DATED, SIGNED AND DELIVERED THIS 20TH DAY OF JUNE 2013

**JUSTICE MUNYAO SILA**

**ENVIRONMENT AND LAND COURT AT ELDORET**

***Read in open Court***

***In the Presence of:-***

***G. Tarus advocate present for the plaintiff***

***N/A for the defendant who has never entered appearance***