



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT KITALE Civil Case 26 of 2008**

**ANDREA BARASA MANYONGE.....PLAINTIFF**

**VERSUS**

**JOSEPHAT WANJALA.....DEFENDANT**

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

By a plaint dated 20<sup>th</sup> March, 2008 the plaintiff claims the following reliefs against the defendant.

- (a) A declaration that the plaintiff is the rightful and legal owner of a parcel of land known as Bungoma/Tongaren/391 hence the defendant is a trespasser and is in unlawful and illegal occupation and enjoyment of the said land and an order of eviction should be issued against him;
- (b) A permanent injunction be issued against the defendant restraining him from interfering in any way whatsoever with the suit land;
- (c) Costs of the suit.

Summons to Enter Appearance and the plaint were served upon the defendant who entered appearance but failed to file defence within the period stipulated by the law.

The suit was, consequently upon application, fixed for formal proof on 26<sup>th</sup> January 2009 and adjourned to 17<sup>th</sup> November 2009 and further adjourned to 18<sup>th</sup> November, 2009.

The defendant never filed Appearance or defence. The suit thus proceeded ex-parte.

The plaintiff, in his evidence, testified that he is the registered proprietor of land parcel No. Bungoma/Tongaren/391 measuring approximately 92 hectares. That the defendant has been residing on the said parcel in his capacity as a son to the plaintiff. However, sometime in the year 2007 the defendant without any colour of right and consent from the plaintiff commenced leasing portions of the plaintiff's said land and cultivating a substantive part of the same without the consent of the plaintiff thereby occasioning substantial loss and damage to the plaintiff.

It is the plaintiff's case that the defendant is thus a tress passer and should be declared so. Hence an eviction order should issue against the defendant. That the continued stay of the defendant on the suit land, poses great danger to the plaintiff and his family. In any case the defendant has alternative parcel of land measuring half ( ½ ) an acre at Sangu Scheme, courtesy of a purchase at the behest of the plaintiff purely on humanitarian grounds.

As I said earlier the defendant was served with the summons to Enter Appearance and failed to file appearance or defence. The suit thus proceeded ex-parte.

I have carefully analyzed the evidence adduced by the plaintiff in its entirety. In the absence of evidence in rebuttal on the part of the defendant, I find as a fact that the suit land belongs to the plaintiff as embodied in the title deed, Exhibit I.

I equally find, as a fact that the plaintiff has gone out of the way to purchase half ( ½ ) an acre of land to settle the defendant as per exhibit 4.

Against that backdrop of evidence, there shall be judgment for the plaintiff against the defendant in the following terms.

- (a) A declaration that the plaintiff is the rightful and legal owner of a parcel of land known as Bungoma/Tongaren/391 hence the defendant is a trespasser and an order of eviction shall issue against the defendant, his agents, servant, assigns or anyone claiming under him;
- (b) A permanent injunction shall issue against the defendant restraining him, his agents, servants, assigns or anyone claiming under him, from interfering in any way whatsoever and howsoever with the said suit land;
- (c) There shall be no orders as to costs.

Dated and delivered at Kitale this 1<sup>st</sup> day of December, 2009.

**N.R.O. OMBIJA**

**JUDGE**



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