



Case Number:	Civil Case 185 of 2004
Date Delivered:	05 May 2006
Case Class:	Civil
Court:	High Court at Nakuru
Case Action:	-
Judge:	Martha Karambu Koome
Citation:	RICHARD KOECH v WILLIAM KIKWAI MITEI [2006] eKLR
Advocates:	-
Case Summary:	<p><b>JUDGMENT – declaratory judgment – application for</b> – applicant sought for declaratory judgment that the he is the lawful owner of the suit property – where the application was not opposed – effect of – factors the court considers in such applications</p> <p><b>INJUNCTION – permanent injunction – application for</b> – applicant sought to restrain the respondent from denying him peaceful enjoyment of the suit property - where the applicant is the registered owner of the property – applicable principles – validity of order</p>
Court Division:	-
History Magistrates:	-
County:	-
Docket Number:	-
History Docket Number:	-
Case Outcome:	-
History County:	-

Representation By Advocates:	-
Advocates For:	-
Advocates Against:	-
Sum Awarded:	-
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**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAKURU**

**Civil Case 185 of 2004**

**RICHARD KOECH.....PLAINTIFF**

**VERSUS**

**WILLIAM KIKWAI MITEI.....DEFENDANT**

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

**Richard Koech** filed this suit against **William Kikwai Mitei** seeking for a declaration that Plot No.60 Kirobon Farm measuring approximately 30 acres is his property.

Further, he sought for an order of Permanent Injunction restraining the respondent, his servants and agents from interfering or denying the plaintiff peaceful enjoyment, occupation and use of the suit premises.

During the hearing of this case the plaintiff sought to amend paragraphs 3 of the Plaint to read approximately 30 acres instead of 20 acres which was a typographical mistake and the amendment was allowed with the amendment of paragraph 3 to read 30 acres instead of 20 acres...

The Plaintiff gave evidence in support of his claim and relied on the evidence of Benjamin Chesangut, PW2 and Timothy Mwangi Nyaga, PW3 a Land Surveyor working with M/S Olwenyi & Associates Licensed Surveyors.

Briefly the plaintiff's case can be stated.

According to the Plaintiff in 1984 he entered into a sale agreement with the defendant and purchased 30 acres of land being plot s Nos.146 and 157 situated at the kirobon FarmersCo. Ltd. The plaintiff paid Kshs.400,000/- for the purchase of the land but when the Surveyors attempted to place the beacons so that title deeds could be issued, the defendant and his children sent away the Surveyors while threatening to harm them. The Plaintiff said that the defendant has encroached his land and fenced off 5 acres which is part of his land. The Plaintiff produced the sale agreement dated 25/05/2004 between himself and the defendant.

PW2, a neighbour of the plaintiff and also the Chairman of Kirobon Farmers Company Ltd which owned the suit premises also gave evidence in support of the plaintiff's claim. PW2 confirmed that the Plaintiff purchased 30 acres of land from the defendant but when they were preparing the title it was discovered that the defendant had encroached on his land by taking 5 acres out of the plaintiff's portion.

The defendant chased the surveyors when they came to fix the boundaries. The PW3 is a Land Surveyor by profession working with Olwenyi & Associates the firm of Surveyors who carried out the sub-

division of the entire Kirobon Farm. He produced the survey maps which shows the original number for plot No.60 was plot No.154 and original No. for 151 and 152 were given No.59. Both plots No.60 and 59 are approximately 30 acres and that land is the plaintiff's property.

According to PW3 if there is a boundaries dispute it should be resolved by the District Surveyor but the Defendant threatened to harm the Surveyor instead of following the laid down procedure of setting boundary disputes...

I have carefully considered the evidence adduced and the documents that were produced in evidence. The Plaintiff has sought for a declaratory Judgment because of the acts of direct interference with the process of preparing his title and his quiet possession of the suit premises that he purchased from the defendant.

The plaintiff also sought for an order of Injunction because his entry and the use of the land is threatened by the defendant or the Defendant's agents.

This case was not defended. I am satisfied that the plaintiff has proved his case to the required standard, that is he purchased the suit premises and according to the survey map the defendant has encroached on the plaintiff's land.

Accordingly Judgment is entered for the plaintiff by way of a declaration that the plaintiff is the lawful owner of plotNo.60 Kirobon Farm measuring approximately 30 acres and the defendant is a trespasser on a portion of 5 acres thereof.

A permanent Injunction restraining the defendant either by himself/servants/agents/assigns from encroaching, trespassing or in any manner interfering with the plaintiff's quiet enjoyment of plotNo.60 Kirobon Farm.

The Plaintiff shall also have the costs of this suit.

It is so ordered.

Judgment read and signed on 5<sup>th</sup> May, 2006

**MARTHA KOOME**

JUDGE



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