



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISUMU

ENVIRONMENT AND LAND CASE NO.102 OF 2012

JOHN ODERA ODERA.....PLAINTIFF

VERSUS

JAMES OYATTA OKELLO.....DEFENDANT

FINAL JUDGMENT

1. By a plaint filed here on 20/11/2012 the plaintiff – **JOHN ODERA ODERA** – is seeking various prayers against the defendant – **JAMES OYATTA OKELLO** – who is said to be a trespasser and illegal occupier of Land Parcel No. **NORTH SAKWA/MARANDA/1905** (which is suit land hereafter).
 2. According to the plaint, the trespass and illegal occupation took place in or about 2010 and the defendant has subsequently misused, damaged, wasted and destroyed the suit land. He has, by so doing, deprived the plaintiff of use and enjoyment of the property.
 3. The orders sought are as follows:-
 - (a) **A declaration that the plaintiff is entitled to exclusive and unimpeded right of possession and occupation of the suit land and that the defendant whether by himself or his servants or agents or otherwise however are wrongly in occupation and are therefore trespassers.**
 - (b) **A permanent injunction restraining the defendant whether by himself or his servants or agents or otherwise howsoever from remaining or continuing in occupation of the suit land.**
 - (c) **An order of eviction of the defendant from the suit land and demolition of all the structures constructed thereon by the defendant.**
 - d. **General damages for trespass**
 - (e) **Costs of the suit together with interests.**
 - (f) **Any further appropriate relief.**
4. It appears clear that the defendant was served. There is an affidavit of service to that effect filed here on 7/2/2013 and dated 23/1/2013. In spite of that however, the defendant didn't enter appearance and/or file defence. As a result, judgment was requested for and the same was entered on 24/7/2013.
 5. The matter then came for formal proof on 17/9/2014, when the plaintiff testified as P.W.1. He said the defendant entered his land sometimes in 1999 and put up a house there. He reported the

defendant to the area local administration and, after deliberations, the defendant was ordered to leave the land. He has been there burning charcoal, grazing his animals and cutting down trees.
6. In the course of hearing, the plaintiff availed the following exhibits:

(a) His title deed (Plf EX.No.1)

(b) A copy of search certificate showing the land as his (Plf EX No. 2)

(c) Demand letter written to the defendant (Plf EX No.3)

(d) Reply by the defendant to the demand letter Plf EX No.4

4. The plaintiff has demonstrated well that the suit land belongs to him. He availed the title deed and a search certificate to confirm ownership. The defendant mounted no challenge.
5. The proceedings before the court bring out the defendant as a trespasser and illegal occupier. The plaintiff has proved his case on balance. He is therefore granted prayers (a) (b) and (c). Prayer (c) which is for eviction requires to be executed with caution. The plaintiff should give the defendant a Notice of 90 days to quit failing which he can carry out the eviction. The plaintiff also gets prayer (e) which is for costs and interests. Prayer (d) which is for damages is not granted. No evidence was led on that.

The prayers granted so far are deemed adequate and prayer (f) is therefore not up for consideration.

A.K. KANIARU – JUDGE

29/1/2015