



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KISII

Civil Case 83 of 1988

OCHARO OOGA.....APPLICANT/PLAINTIFF

-VERSUS-

SABINA OBONYO ATERA.....RESPONDENT/DEFENDANT

RULING

The plaintiff and the defendant are brothers. The defendant is the registered owner of land parcel no. West Kitutu/Mwagichana/2048. He was sued by the plaintiff who claimed the defendant held it in trust for him. The defendant denied the claim and pleaded that land was his. On 7/10/97 the court dismissed the plaintiff's claim with costs. No appeal was preferred by the plaintiff.

On 7/1/10 the plaintiff rushed to court under *Order 44 rule 1 of the Civil Procedure Rules and sections 3,3A and 63 (c) and (e) of the Civil Procedure Act* seeking that the eviction warrant dated 16/12/97 be reviewed and set aside. In the interim he sought stay of the eviction.

I have considered the affidavit sworn to support the application and the replying affidavit. There is an eviction warrant allegedly issued by the Deputy Registrar on 16/12/97 that forms the basis of the plaintiff's claim. It was addressed to the District Officer, Marani, to evict the plaintiff and to remove his property. The defendant did not have a counter claim for eviction, or at all, and there would be no basis in law for the order. If such warrant was issued, it is hereby recalled and nullified. To this extent, the application is allowed with costs.

Dated, signed and delivered at Kisii this 1st Day of February, 2010.

A.O.MUCHELULE

JUDGE

1/2/2010

Before A.O.Muchelule-J

Court clerk-Bibu

Mr. Minda –present

COURT: Ruling in open court.

A.O.MUCHELULE

JUDGE

1/2/2010