



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KISII

Civil Case 84 of 2007

BEN OROWE OYUGI.....PLAINTIFF

-VERSUS-

JASHON ELISHA ACHOLO OBADO.....DEFENDANT

JUDGMENT

There is land parcel No. 1100 Kasrime Adjudication Section situated within Kwabwayi West Location Ndiwa Division of Homa Bay District which was adjudicated by Kasrime Land Committee to belong to the plaintiff (exhibit 1). The defendant objected to the findings of the Committee but was not successful (exhibit 4). He appealed to the Minister under section 39(1) of the *Land Adjudication Act, Cap 284 of the Laws of Kenya*. The appeal was heard by the District Commissioner, Homa Bay on behalf of the Minister. The appeal was dismissed.

The plaintiff has brought this suit against the defendant claiming the latter trespassed onto a portion of the land on 5/1/1999 and on 1/1/2007 which he annexed and put up a home thereon to the former's detriment. The plaintiff claimed he was suffered loss and damage as the invasion was without excuse or lawful justification. He sought general damages for the trespass and a permanent injunction against the defendant.

The defendant did not enter Appearance or file Defence. On 12/9/2008 an interlocutory judgment was entered.

The plaintiff appeared before me for formal proof and gave evidence. It was same evidence as indicated above. He sought the orders prayed in the plaint. He was represented by Mr. Orengo.

Section 30(1) of the Act above provides as follows:

“30(1) except with the consent in writing of the adjudication officer, no person shall institute and no Court shall entertain, any Civil proceeding concerning an interest in land in an adjudication section until the adjudication register for that adjudication section has become final in all respects under section 29(3) of this Act”

The Plaintiff did not plead or give evidence that, in respect of the land adjudication section in which this parcel falls, all appeals have been

determined. When all appeals have been determined then, under *section 29(3)*, the Director of Land Adjudication shall alter the duplicate adjudication register to conform with the determinations, and certify on the register that it has become final in all respect, etc. The Plaintiff did not produce in evidence any written consent by the adjudication officer authorizing the bringing of this action.

The consequence is that the plaintiff had no capacity to bring this suit. The same is incompetent and is struck out with costs. The order for interlocutory judgment is set aside.

Dated, signed and delivered at Kisii this 27th day of November, 2009.

A.O.MUCHELULE

JUDGE

27/11/2009

Before A.O.Muchelule-J

Mongare court clerk

Mrs. Asati for Mr. Orengo for plaintiff

COURT: Judgment in open court.

A.O.MUCHELULE

JUDGE

27/11/2009