



REPUBLIC OF KENYA

**IN THE HIGH COURT OF KENYA
OF KISII**

Civil Case 396 of 1998

ESTHER MWANGO KERANDI.....PLAINTIFF

-VERSUS-

1. WILLIAM OISASA)

2. WILFRED OIRERE OISOSA).....DEFENDANTS

3. CHRISTOPHER MOSE OISOSA)

JUDGMENT

Land parcel Bassi Boitangare/638 measuring about 1.62 Hectares has since 3/6/98 been registered in the name of the plaintiff. Certificate of Official Search (Exhibit 2) refers. He was issued with Title Deed on 4/6/98. He filed this suit on 27/6/98 against the defendants claiming that they had entered the land without her consent and/or authority, occupied it forcefully, and stopped her from picking her tea and coffee thereon. They had also cut down her blue gum trees growing on the land. She prayed for their eviction and for permanent injunction to restrain them and all those acting under them from trespassing on the land or interfering with the land. She further asked for general damages costs and interest.

The defendants filed a defence denying the plaintiff was the owner of this land, although registered as indicated above. Their case was that the said registration was false and fraudulent. The particulars of fraud were not stated as is required by *Order 6 rule 8 of the Civil Procedure Rules*. The defendants pleaded this was their family land on which they have lived from time immemorial, and which was bequeathed to them by their father Oisosa Motonu.

During testimony, the plaintiff told court that her late husband Zakayo Kerandi had, before his death, vide agreement (exhibit 1), bought this land from the late Augustino Nyangwara Monyagete on 3/5/1976. Her husband moved into the land and begun cultivating it. He

died in 1987 before Augustino had transferred the land to him. The defendants then moved into the land and begun harassing her, as claimed in the plaint. In 1998 Augustino transferred the land to the plaintiff. He then died in 2003.

Exhibit 2 shows that Augustino was registered the proprietor of the land on 15/5/1967. It was a first registration.

The defendants are brothers. Their evidence was that they stay on land parcel no. Bassi/Boitangare/ 209 which belongs to their late father Oisosa Motonu. They denied that they claim parcel Bassi/Boitangare/638 or that they have occupied it.

It was common evidence that the two parcels do not share a common boundary.

The defendants say their father was living on parcel Bassi/Boitangare/209 and this was where he was buried. They produced Certificate of Official Search (D exhibit 2) showing Oisosa Motonu was registered owner of this land on 15/5/67, as first owner.

There are two letters (D Exhibit 3 and D Exhibit 4) produced by the defence. They are addressed to the plaintiff from the Land Registrar, Kisii. The letters were asking that she surrenders her Title Deed to the land in dispute because the letter of consent that sanctioned the transfer to her had not been “officially” issued by Nyamache Land Control Board. It is critical that the Land Registrar was not saying that the land in question did not exist, as their records show, or that Augustino was not its previous owner. The plaintiff called PW4 John Ongeri who told court he was the one who sold this land to Augustino, who later sold it to the plaintiff’s late husband. She also called the area assistant chief Charles Nyakundi (PW3) to say that he knows the two parcels of land on the ground. They are separate parcels, 638 belonging to the plaintiff and 209 belonging to the defendants. There is another piece of land between them, but that the defendants have gone onto the plaintiff’s land and chased her away.

On the evidence, I find the plaintiff is the registered owner of parcel no Bassi/Boitangare/638. This land is separate and distinct from the defendants father’s Bassi/Boitangare/209. I find the defendants have unlawfully entered the plaintiff’s land, laid claim to it and have destroyed property thereon. The registration in the name of the plaintiff gives her absolute and indefeasible claim to the land as provided under *sections 27 and 28 of the Registered Land Act (Cap.300)*. The defendants’ illegal occupation has denied the plaintiff her right to peaceful occupation and enjoyment of the land. An order of eviction and permanent injunction shall issue as prayed.

Regarding general damages, although the plaintiff did not particularize and value the damage, the forceful entry, occupation and damage which have been proved will give some indication as to how much should be paid. In the circumstances of this case, I make an assessment of Kshs. 100,000/= in general damages which I ask the defendants to pay together with interest and costs.

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

Mr. Koina for plaintiff

Mr. Ongige for Mr. Sagwe for Defendants

COURT: Judgment in open court.

A.O.MUCHELULE

JUDGE

27/11/2009