



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

Civil Case 44 of 2006

RHODAH NYANGOTO OIRERE.....PLAINTIFF

-VERSUS-

JOYCE KEMUNTO.....1ST DEFENDANT

JACKLINE J. NYANDIKA.....2ND DEFENDANT

JUDGMENT

From the evidence, the plaintiff is the registered proprietor of Land parcel no. *Majoge/Bombaba/1333*. Her complaint was that on 26/11/2005 the defendants trespassed onto his piece of land and buried the remains of the late *James Oirere* (the son of 1st defendant) after having erected a semi-permanent house thereon. The defendants have since continued to trespass on the land and to destroy boundary features and destroy crops growing thereon. They have denied the plaintiff the use of the land and caused extensive waste to it. She sought an order evicting the defendants from the land and demolition of the structures the defendants have put up thereon. She sought the interference be stopped and the remains of the late *James Oirere* be exhumed. General damages were asked for together with costs and interest.

The defendants did not enter Appearance or file Defence. An interlocutory judgment was entered on 20/6/2007. The plaintiff gave evidence in formal proof which was not controverted. She is entitled to the orders of eviction and permanent injunction. The

exhumation of the body of the late James Oirere will be subject to any public health concerns by the relevant authority.

No evidence was given as to how much damages should be payable. There was no evidence as to how much, in monetary terms, has been lost because of the trespass. However, the fact of trespass was proved as was the burial of the body here. I will award Kshs. 50,000/= (fifty thousand) in general damages. Costs and interest shall follow the event.

Dated, signed and delivered at Kisii this 10th day of November, 2009

A.O.MUCHELULE

JUDGE

10/11/2009

Before A.O.Muchelule-J

Court clerk-Mongare

Mr. Masese for Mr. Minda for plaintiff

COURT: Judgment in open court

A.O.MUCHELULE

JUDGE

10/11/2009