



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
OF KISII
Civil Case 155 of 2009**

**DUNCAN OTIENO OGWANG (suing as administrator to the estate of JOSEPH
OGWANG ZABLON-DECEASED).....PLAINTIFF**

-VERSUS-

TIMOTHY OBIERO.....DEFENDANT

R U L I N G

The respondent was served with summons to enter appearance and the application but did not respond, either by entering appearance and filing defence or by replying to the affidavit. The averments by the applicant were therefore not controverted.

There is leasehold property comprised in *Kisii Municipality Block 111/152* which is registered in the names of the deceased Joseph Ogwang Zablun and Jane Kerubo Ogori, each having half-share. Joseph died and was succeeded by the plaintiff Duncan Otieno Ogwang. The respondent has occupied the deceased's share, and this is without permission or lawful reason. This application was brought for mandatory injunction to have him vacate the premises while the suit is waiting to be determined.

A mandatory injunction can only be granted at this stage where the issues are clear and straight forward. The case has to be unusually strong, compared to that of prohibitory injunction. (See *East Africa Fine Spinners Ltd .V. Bedi Investments Ltd, Civil Application no. 72 of 1994 at Nairobi*). I am satisfied that the applicant has provided that assurance.

The application is granted with costs.

Dated, signed and delivered at Kisii this 6 th Day of November, 2009

A.O.MUCHELULE

JUDGE

6/11/2009

6/11/2009

Before Hon. A.O.Muchelule-J

Court clerk-Mongare

Mr. Minda for the applicant

COURT: ruling in open court.

A.O.MUCHELULE

JUDGE

6/11/2009