



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

**Civil Case 40 of 2006**

**LOICE KEMUNTO MOGIRE**

**(suing on behalf of the estate**

**of DAVID MOGIRE OMWEGA)..... PLAINTIFF**

**VERSUS**

**JAMES KERINDI OMWEGA ..... DEFENDANT**

**JUDGMENT**

The plaintiff is the administratrix of the estate of the late DAVID MOGIRE OMWENGA, herein after referred to as “*the deceased*”. The deceased was the registered proprietor of a parcel of land registered as BASSI/BOSANSA/1561, herein after referred to as the “*the suit land*”. The plaintiff averred that sometimes in December 1999 the defendant forcibly and unlawfully trespassed upon the suit land and disturbed her quiet and peaceful possession of the same. Thereafter the defendant was arrested and charged with forcible detainer of the suit land vide **Criminal Case No.153 of 2000** before the Chief Magistrate’s Court at Kisii. He was convicted and sentenced to 2 years’ imprisonment. The plaintiff produced the proceedings and the judgment in the aforesaid criminal case.

That notwithstanding, the defendant has continued to trespass upon the suit land, the plaintiff stated. She prayed for a permanent injunction to restrain the defendant, his servants, workers and/or agents from trespassing upon the suit land. The defendant did not file any defence and consequently the matter proceeded to formal proof.

I am satisfied that the plaintiff has proved her claim on a balance of probabilities. There is no dispute that the deceased is the registered proprietor of the suit land. A certificate of official search was produced as proof thereof. The defendant has no legal basis of trespassing upon the suit land. I grant the order of permanent injunction as sought by the plaintiff. The defendant will bear costs of this suit.

**DATED, SIGNED and DELIVERED at KISII this 30<sup>th</sup> day of May, 2008**

**D. MUSINGA**

**JUDGE.**

Delivered in open court in the presence of:

Mr. Nyambati HB for Mr. Mogire for the plaintiff

N/A for the defendant.

**D. MUSINGA**

**JUDGE.**