



**REPUBLIC OF KENYA**

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

**Civil Case 265 of 2002**

**FANNY MORAA CHWEYA ..... PLAINTIFF**

***VERSUS***

**OSORO OMARACHI ..... DEFENDANT**

**JUDGMENT:**

Fanny Moraa Chweya, the plaintiff prays for an order of permanent injunction restraining the defendant by himself, servants or agents from remaining and or continuing in occupation of land parcel No. WANJARE/BOGIAKUMU/1581. She prayed for vacant possession of the land and general damages.

The plaintiff is the wife of the late JAMES AYUKA CHWEYA who was the registered owner of land No. Wanjare/Bogiakumu/1581. After the deceased died the plaintiff filed a succession cause being NBI SUCC. CAUSE NO. 250 of 2001. She was issued with a grant which was confirmed on 30<sup>th</sup> July 2003. The land in dispute was inherited by her jointly with CHIMI BONARERI. She told the court that after her husband died the defendant moved into the land and started to cultivate. He built temporary structures there. She has asked him to leave but he has refused and hence this suit.

The defendant despite being served did not enter appearance or file a defence.

As stated the plaintiff gave evidence and produced a certificate of search from the lands office showing the land was registered in her late husband's name. She also produced a certificate of confirmation of grant issued to her in respect of the estate of her late husband. She was one of the beneficiaries.

Thus though ownership has not been transferred to her it is clear that she owns the land.

Plaintiff testified that defendant entered the land in 1999 after the death of her husband. This was confirmed by RAEL KEMUMA OBAGA (PW2) who had been left to take care of the land. The defendant chased her from the land and went into occupation.

I am therefore satisfied that the land belongs to the plaintiff and the defendant is illegally occupying it.

The plaintiff claimed general damages. However in her evidence she did not state what she would have gained for the years the defendant had been in occupation. She did not offer the court any facts on which general damages could be calculated on.

I am therefore unable to award any general damages.

I therefore enter judgment for the plaintiff and order defendant to give unto the plaintiff vacant possession of land No.Wanjare/Bogiakumu/1581. I also issue an order of permanent injunction restraining the defendant from occupying or continuing to occupy and cultivate the said land.

I also award costs of suit to the plaintiff.

Dated this 21<sup>st</sup> February 2006.

**KABURU BAUNI**

**JUDGE**

Cc – Mobisa

N/a for plaintiff though informed.