

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KISII
CIVIL CASE NO.350 OF 1994

DAVID OMORI GECHURE PLAINTIFF
VERSUS
PETER MOSE OTWERE DEFENDANT

JUDGMENT

The plaintiff DAUDI OMORI GECHURE sued the defendant PETER MOSE OTWERE seeking for an Order of Eviction of the defendant from Land NO.BASSI/BOSINGI/1393, a permanent injunction restraining the defendant, his servants and or agent from trespassing on that land and also for General damages and costs of the suit. He however abandoned the prayer of general damages during the hearing.

The defendant filed a defence on 25th July 1994 and stated that the land in dispute was their ancestral land. The defendant was struck out on 24/2/03.

On the hearing day the defendant and his counsel were absent though served.
The hearing proceeded in their absence.

The plaintiff (PW1) told court that he bought the land in question in 1981 from SAMUEL ORWORI. The land was transferred to him in 1993. No body was living in the land when he bought it but soon thereafter the defendant moved into the land and started to cultivate without his consent. He has built houses there. He produced title deed and an official search certificate which should the land was in his name.

I have carefully considered the evidence adduced. The plaintiff produced a title deed which shows the land is in his name.It was issued to him on 28th April 1993. The title deed and the official search certificate were not challenged. Though in defence the defendant stated that Samuel Orwochi had no land to sell to the plaintiff no evidence was adduced. No other civil case pertaining to the two parties over the land has been brought to the attention of the court. The case is therefore not res judicata.

From the above there I am satisfied that the plaintiff has proved his case on a balance of probabilities and I enter judgment as prayed in prayers (a) (b) and (c).

Dated 9th May 2005.

KABURU BAUNI
JUDGE

cc. Mobisa
Mr. Otieno for Mr. Masese for plaintiff.