

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISII

CIVIL CASE NO.44 OF 1999

PITALIS OSWAGO OBUNGA PLAINTIFF

VERSUS

OGOLA APIYO DEFENDANT

JUDGMENT:

Plaintiff's claim is for a declaration that he is the owner of land No.KANYAMWA/KAYAMBO-KWAMO/1160. He further prays for an order to evict the defendant, his servants and or agents from the land. He further claims shs.49,335/= special damages and also claims for general damages, mesne profits, profits prendre, costs and interest.

The defendant filed a defence but on the hearing date failed to turn up. Interlocutory judgment was entered on 25th September 2003. On 13th October 2003 the plaintiff gave evidence before Justice Wambilyangah who fixed judgment on 27th October. However by then he had left service.

Plaintiff told court that the defendant is occupying his land Kanyamo/Kayambo- Kwamo/1160. They had a dispute before the land adjudication committee in 1970 and the decision was in his favour. Defendant appealed to the Minister who ruled in the plaintiff's favour. That was in 1998. The D.C. Homa Bay wrote to him to vacate the land. He did not do so. He burned trees in the land.

As I said the defendant did not call any evidence. The evidence of the plaintiff is clear and unchallenged. The adjudication committee heard dispute between the two parties and awarded the land to the plaintiff. This decision was confirmed by the Minister on appeal. There is therefore no dispute the land is his. Plaintiff said defendant stay in the land. His son has erected a house on the land. He should therefore leave the land. Plaintiff claimed special damages of shs.49,335/=. However in his evidence he only talked of shs.32,065/=. I award him that amount.

As for mesne profits plaintiff did not attempt to show how much the defendant was getting from the land. It will therefore be difficult for the court to award mesne profits.

From the above I find plaintiff has proved his case and I enter judgment for him in terms of prayers (a), (b), (c) – (32,065/=) (g) and (e).

It is so ordered.

Dated at Kisii on 29th July 2004.

KABURU BAUNI

JUDGE

29/7/04

Mr. Ogari holding brief for Mr. Okoth for plaintiff. N/A for defendant.

KABURU BAUNI

JUDGE

29/7/04