



**REPUBLIC OF KENYA**

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

**ENVIRONMENT AND LAND COURT**

**ELC. NO.44 OF 2012**

**JARED AMWATTA MULLAH.....PLAINITFF**

**VS.**

**NICHOLAS OMONDI OCHIENG.....DEFENDANT**

**FINAL JUDGEMENT**

1. The plaintiff – **JARED AMWATA MAULLIAH** filed this suit here on 5/9/2012 vide a plaint dated 22/8/2012. The suit is against the defendant - **NICHOLAS OMONDI OCHIENG** – who is said to have unlawfully entered and occupied land parcel No. **KISUMU/JIMO WEST/603**. (Hereafter the suit land). The defendant is also said to be cultivating the suit land.
2. The plaintiff is the administrator of the estate of the late **MULA AGOT**, who was the registered owner of the said land.
3. The following prayers are sought:
  - (a) *An order of eviction of the defendant from the suit land.*
  - (b) *An order of permanent injunction restraining the defendant either by himself, servants, agents or whosoever from remaining on or occupying re-entering or in an other manner interfering with the suit land.*
  - (c) *Costs and*
  - (d) *Interests*
4. It appears clear that the defendant was served. There is an affidavit of service filed here on 21/12/2012 and dated 6/11/2012. It is sworn by one **DANIEL NYANGWARA** and shows, inter alia, that the defendant was served at his home on 15/10/2012.
5. In spite of service however, the defendant didn't enter appearance and/or file defence. Interlocutory judgment was then asked for and the same was entered against the defendant on 15/5/2013.
6. On 29/1/2014, the matter came for formal proof. The court heard the plaintiff, who reiterated the averments in the plaint. It emerged that the plaintiff is the son of the late owner of the suit land. The plaintiff produced the title deed of his late father (Plaintiff Ex.No.1). He also availed a grant showing him as the administrator (Plaintiff Ex.No.2).

7. This is a simple and straight forward matter. Nothing is controverted. And it is demonstrated well that the defendant was served. The plaintiff said he is not related to the defendant. It is abit puzzling how the defendant could enter, occupy, and cultivate land that does not belong to him. Given the fact as they emerge, it is clear that the plaintiff is a trespasser and an illegal user and occupier of the suit land.

8. The plaintiff is therefore granted an order of eviction. Before carrying out eviction however, the plaintiff should give the defendant a 3 months notice.

9. If the defendant fails to vacate the suit land voluntarily within that period, he should then be forced to do so. The plaintiff also gets the orders of permanent injunction, costs and interests as prayed for in the plaint.

**A.K.KANIARU**

**ENVIRONMENT & LAND – JUDGE**

**7/5/2015**

7/5/2015

A.K. KANIARU

John court clerk

No party present

Orango M. for Owino for plaintiff

Interpretation English/Kiswahili

Court: Final Judgment read and delivered in open court.

Right of appeal 30days.

**A.K.KANIARU**

**ENVIRONMENT & LAND – JUDGE**

**7/5/2015**