



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISUMU

LAND CASE NO.148 OF 2013

JOHN EDWARD OSOK.....PLAINTIFF

VERSUS

PAMELA APIYO OTIENO & FIVE OTHERS.....DEFENDANT

FINAL JUDGMENT

1. The plaintiff – **JOHN EDWARD OSOK** – filed this suit here on 11/6/2013. The plaint by which the suit was filed is dated 22/5/2013 and names six defendants – **PAMELA APIYO OTIENO** (1st defendant), **JACKSON OGARA** (2nd defendant) **ROSEMARY WAGARA** (3rd defendant), **WALTER OGANDO** (4th defendant), **AKINYI DOGO** (5th defendant) and **GEORGE LANGO** (6th defendant).
2. The plaintiff has accused the defendants of illegally occupying and carrying out business on plot No.26, Nyangweso market, without paying rent and without any formal lease executed with the plaintiff.
3. The plaintiff wants to be granted vacant possession of the plot and an order for Mesne profits at 4000/= per month. The basis for the plaintiff's claim is that he is the administrator of the estate of his late father – **AINEA JAIRO OSOK** – who was the owner of the plot.

The plot was then known as PLOT NO.13. The plaintiff also wants to be paid costs and interest.

4. Court records show that the defendants were served. An affidavit of service filed here on 30.9.2013 and dated 12th September 2013 describes how each of the defendants was served. The affidavit captures not only time and place of service but also some of the details of physical appearance of some of the defendants.
5. Despite service however, the defendants didn't enter appearance and/or file defence. And because of this judgment was asked for against them and the same was entered on 1/10/2013.
6. Thereafter, the matter came for formal proof on 11/3/2014. The plaintiff is the only witness who testified. He reiterated more or less what the plaint contains.
7. In addition the plaintiff availed the following exhibits:-
 - Plf EX No.1 – which is a letter dated 10/2/2014 confirming that Plot No.26, Nyangweso market, was originally plot No.3 and was in the name of the later father of the plaintiff – **AENEA OSOK**.
 - Plf EX No.2 – which is a grant of letters of Administration to the plaintiff.
 - Plf EX No.3 – which is a confirmed grant of Letters of administration to the plaintiff.
8. Also contained in the plaintiff's evidence are more details concerning his monetary claim. The 1st defendant is said to have entered the plot, which is developed on 1/5/2008. The 1st defendant then

- rented out the premise to the other defendants. The total monthly rent is put at 7000/=, with 4000/= coming from the front shops and 3000/= from structures said to be at the back.
9. This is an uncontroverted claim. Service appears to have been effected but none of the defendants bothered to enter appearance or file defence. The plaintiff, however, didn't work out his monetary claim.
10. There is really nothing standing in the way of the plaintiff's claim. Accordingly the plaintiff gets all what he claims in the plaint viz:

- (a) An order of vacant possession and Eviction of the defendant from Plot No.26, Nyanweso market.
- (b) Costs of the suit.
- (c) Mesne profits at Kshs.4000 per month (should be 7000/= from evidence but 4000/= is what is pleaded) from the date of entry (1/5/08) until vacant possession is secured.
- (d) Interests at Court rates.

A.K. KANIARU – JUDGE

7/10/2014

7/10/2014

A.K. Kaniaru – Judge

Dianga G – C/C

Plaintiff – Present Defendant – absent

Lore for Kowino for plaintiff

COURT: Final judgment read and delivered in open COURT.

Right of Appeal – 30 days.

A.K. KANIARU – JUDGE

7/10/2014

AKK/vaa