



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISII

ENVIRONMENT & LAND CASE NO. 378 OF 2012

**HEZEKIAH OMARE ARAKA (Suing through his Donee BEN ONKINDO
ARAKA.....PLAINTIFF**

VERSUS

**JANE MORAA RATEMO.....
.....DEFENDANT**

JUDGMENT

1. The plaintiff brought this suit against the defendant on 16th day of October, 2012 through a plaint dated 19th June, 2012. The suit was brought in the name of the plaintiff through his attorney one, Ben Onkindo Araka. The plaintiff resides and works for gain in the United States of America. The plaintiff claims that at all the material times he was and still is the registered proprietor of the parcel of land known as L.R.NO. Nyaribari Masaba/Bonyamasicho/399 (hereinafter referred to as “**the suit property**”).
2. The plaintiff claims that on or about the year 2007 the defendant entered the suit property forcibly and erected thereon a semi-permanent dwelling house and also commenced cultivation thereon in disregard of the plaintiff’s proprietary interest in the property. The defendant thereafter lodged a claim against the plaintiff before Masaba land disputes tribunal (“tribunal”) in tribunal case No. 46 of 2007 which case was determined in favour of the defendant. The defendant proceeded to file the said tribunal’s decision before Keroka Senior Resident Magistrate’s court for adoption as a judgment of the court in Keroka SRMC. Misc. Appl. No. 8 of 2007 which court duly adopted the said tribunal’s decision as a judgment. The plaintiff was aggrieved by the said decision of the tribunal and its adoption by the Keroka Senior Resident magistrate’s court and proceeded to file an application for judicial review to quash the same in Kisii High Court, Judicial Review No. 51 of 2008. The said decision of the tribunal that purported to award the suit property to the defendant was quashed by the High Court on 17th November, 2010 and the Senior Resident magistrate’s court at Keroka was prohibited from enforcing the same.
3. The plaintiff claims that despite the quashing of the said decision of the tribunal, the defendant who was an interested party in the said judicial review application has refused and/or ignored to vacate the suit property. It is as a result of the foregoing that the plaintiff was forced to bring this suit. The plaintiff has sought a declaration that he is the lawful proprietor of the suit property and entitled to peaceful and quiet enjoyment thereof.
4. The defendant was served with the summons to enter appearance but failed to do so. The plaintiff applied for interlocutory judgment in default of appearance and the same was entered by the

deputy registrar on 22nd January, 2013. On 7th May, 2013 this suit was fixed for formal proof on 20th May, 2013. The plaintiff's attorney gave evidence on behalf of the plaintiff and called no witness. The plaintiff's said attorney, BEN ONKINDO ARAKA (hereinafter referred to as "PW1") in his evidence stated that the plaintiff has appointed him as his attorney in relation to the plaintiff's interest in the suit property. He produced the power of attorney donated to him by the plaintiff as P.Exh.1. He stated that the suit property is registered in the name of the plaintiff and that the defendant has entered the same and has refused to vacate the same even after the tribunal's decision that had awarded her the suit property was quashed by the High Court in, Kisii High Court Judicial Review Application No. 51 of 2008. PW1 stated that the defendant has her own parcel of land and should be evicted from the suit property. He urged the court to grant the prayers sought in the plaint. He produced in evidence as PExh.2 a copy of the title deed for the suit property which shows that the same was registered in the name of the plaintiff on 7th October, 1982. He also produced as P.Exh.3 a copy of the order made in Kisii High Court Judicial Review No. 51 of 2008.

5. I am satisfied from the evidence adduced by the plaintiff that the plaintiff has proved his claim against the defendant on a balance of probability. The plaintiff has proved that he is the registered proprietor of the suit property and that the defendant has no lawful excuse for entering or remaining on the suit property her claim to the suit property having been laid to rest in Kisii High Court Judicial Review No. 51 of 2008. Due to the foregoing, I hereby enter judgment for the plaintiff against the defendant as prayed for in the plaint dated 19th June, 2012 save for prayer (c) thereof.

Dated, signed and delivered at Kisii this 7th day of October, 2013.

S. OKONG'O,

JUDGE.

In the presence of:-

Mr. Nyariki .for the plaintiff

No appearance for the defendant

Mobisa Court Clerk.

S. OKONG'O,

JUDGE.