



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT BUNGOMA**  
**LAND AND ENVIRONMENT CASE NO. 190 OF 2014**

LEONARD WAFULA SHIKUKU .....PLAINTIFF/APPLICANT

VERSUS

MARK JUMA WAFULA.....DEFENDANT/RESPONDENT

**JUDGEMENT**

[1] The plaintiff brought this case against his own father. His claim is that his father promised to give him one acre out of Kimilili/Kibingei/4425. The plaintiff avers that his father took him to the Land Control and consented to give him one acre thereof as a gift. He says the transaction was approved by the Land Control Board.

[2] However, after that consent the defendant changed his mind. He had land parcel Kimilili/Kibingei/4425 subdivided and he created Kimilili/Kibingei/4813-15 with the sole aim of denying the plaintiff the alleged land. The plaintiff says that the defendant has started to sell the resultant subdivisions.

[3] The plaintiff now wants the said sub divisions in Kimilili/Kibingei 4813 to Kimilili/Kibingei/15 be cancelled and that the land do revert to the Original Kimilili/Kibingei/4425. He relied on his statement filed herein and the list of exhibits filed herein. He called no witnesses. The defendant did not opt to file any defence though served.

[4] The plaintiff produced an application for land control consent, a consent to transfer Kimilili/Kibingei/4425 from Mark Juma Wafula to Leonard Shikuli Wafula for the whole of the land. Also enclosed was receipt No. 1256137 from Kenya Revenue Authority dated 13/5/2013. There was also a transfer from Mark Juma Wafula to Leonard Shikuku Wafula I/D No. 8783247 dated 2<sup>nd</sup> May 2013 duly executed by the parties before Simiyu A. Makokha advocate.

[5] All these documents were not disputed by the defendant. Once the land control consent was granted for the sale of Kimilili/Kibingei/4425 and a transfer signed by the vendor the beneficial interest in the property passed from the defendant to the plaintiff. The defendant had therefore no capacity to deal with Kimilili/Kibingei/4425. His attempt to sub divide the same and /or sell the resultant parcels was misconceived. He had no interest in the land he subdivided and/or sold.

[6]As a result the parcels created by defendant as Kimilili/Kibingei/4813-15 must be cancelled. They were created by a person whose legal interest on the same had ceased. Those sub divisions shall be cancelled and the land shall revert to Kimilili/Kibingei/4425. The same shall be registered in the name of the plaintiff.

The plaintiff shall have the costs of this case.

It is so ordered.

Dated, signed and delivered at Bungoma this 27<sup>th</sup> day of July 2016

**S.MUKUNYA - JUDGE**

**In the presence of**

Gladys/Joy court assistants

Mr. Were for Mr. Kituyi

N/A for defendant