



auntie, Rosepella Okot (1st wife of Yafes). It is his evidence that Plot Number 603 was bought by the Objector's father. The plot is at Lubinu. Plot 602 did not belong to Yafes. It was given to the Objector's father by his uncles from his mother's side. The plot had a court case before the African Court at Mumias involving Yafes and another claimant. However, Yafes was involved in the case as he was representing his son, Harrison, who was in school that time.

DW1: SHABAN MUKHOLA is Yafes's son and a brother to Harrison Makokha. It is his evidence that their late father had eleven (11) sons. He also had three plots. Two plots were at Isongo and one plot at Lubinu. Plot Number 103 is at Lubinu while plot number 602 is at Isongo. The second plot at Isongo was registered in the names of his other brothers during adjudication. According to him, Plot number 103 is for four sons namely himself, Jackson Ambetsa (deceased) Wycliffe Lutta and John Mukhola. The four have agreed to share the land and they live on the land. It is his evidence that their brother Harrison was given plot number 602. He gave it to the Objector as Harrison bought another land. Plot 602 had a court case been Ezekiah Okanga and their father in 1951. Their father won the case and gave the plot to Harrison. The Objector filed a succession cause number 532 of 2007 and swore an affidavit with his mother indicating that they are not claiming plot number 103.

DW2: JOHN MUKHOLA WAKHU is also the deceased's son. He concurs with the evidence of his brother DW1. It is his evidence that their late father gave the four sons respective shares out of plot number 103. DW3 PETER LUBANGA MAKOKHA is an elder brother to the Objector. He testified that their late father Harrison Makokha had his own land. Their father told them not to claim plot number 103. His brother, the Objector, was given plot number 602 measuring 10 acres. DW3 lives at Shitoti where their late father was living. His brother and their mother swore an affidavit indicating that they are not claiming plot number 103.

the issue for determination is whether Harrison Makokha was entitled to inherit plot number E.WANGA/LUBINU/103 and by extension whether the Objector should get part of that land in place of his late father. The evidence herein shows that plot number 103 was registered in the names of the deceased on 17th May, 1967. It is also established that the deceased had a dispute in relation to plot number 602 with a third party before the Mumias African Court. At that time in 1951 Harrison Makokha was still young. There is no evidence to prove that plot number 602 belonged to Harrison before it was given to him by his father. According to the Objector, his grandmother was called Rosepella Okoti who is PW2's auntie. He had 13 children. The question is, why out of the 13 children plot number 602 would be given to Harrison by his maternal uncles? There were other children who could have equally claimed the land. Why didn't those uncles defend the suit before the African Court since they had donated the land to their uncle Harrison? The only conclusion is that plot number 602 belonged to Yafes and he gave it to his son Harrison. This is where the Objector lives.

The Objector and his mother, Rose Okumu Opwora, swore an affidavit jointly on 26th May, 2010. This affidavit was in relation to this succession cause. Paragraphs 1, 3 and 4 of the affidavit state as follows:

**“1. That we are the administrators of the estate of HARRISON MAKOKHA WAKHU hence competent to swear this affidavit.**

- 3. That we wish to state that we do not wish to be associated with this cause or proceedings thereto since the Dependants and or heirs of Harrison Makokha Wakhu do not have any interest, whatsoever, in the estate of YAFES WAKHU MUKHOLA comprising of land parcel L. R. NO. E/WANGA LUNINU/103.**
- 4. That we know of our knowledge that the deceased HARRISON MAKOKHA WAKHU left his estate comprising land parcels Nos. E/WANGA/LUBINU/1468, E/WANGA/ISONGO/602 and BUKHAYO/MUNDIKA/3442 among others which his dependent/heirs claim.”**

Harrison Makokha on 12th September, 2005 the Objector and his mother were issued with a grant on 3rd December, 2007. The grant list of estate of Harrison as plot number E/WANGA/LUBINU/1468, E.WANGA/ISONGO/602 and BUKHAYO/MUNDIKA/3242. It is clear that the Objector and his mother

