



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT BUNGOMA**  
**ENVIRONMENT & LAND CASE NO.11 OF 2014**

**GEORGE WEPUKHULU.....APPLICANT**

**VERSUS**

**ALFRED WAFULA KHAUKA Administrator of the**  
**Estate of the late LUKA MASAKHA.....DEFENDANT**

**JUDGEMENT**

The Plaintiff 's father bought 3 ½ acres in 1968 from Luka Masakha. Those three acres were to be hived off from Land Parcel No. East Bukusu/South Kanduyi/121.

Part of the purchase of the said 3 ½ acres included the paying of school fees of the vendor's children in President Kennedy High School in Kitale. The plaintiff's father took possession of the said land in 1988. The land had clear demarcation. The plaintiff took this land later in the year 1988.

The plaintiff avers that since 1988 to date he has been in a continuous and peaceful occupation of the same. That the registered owner Luka Masakha died leaving the plaintiff applicant in the suit land.

That thereafter the son of Luka Masakha one Alfred Wafula Khauka filed a Succession Cause in the High Court at Bungoma Succession Cause No.15 of 1999 a certificate of confirmation of Grant was issued to the said Alfred Khauka on 30/1/2013 and the land was distributed to the deceased beneficiaries

Alfred Wafula Khauka – 6.4 acres

Gabriel Benard Masakha – 4.7 acres

Stephen Wafula Masakha – 4.7 acres

Felistas Namalwa Masakha – 4.7 acres

Hesbon Wafula Masakha – 5.5 acres

Redempter Nanyama Masakha – 5.5 acres

The applicant avers that the beneficiaries deliberately left out the applicant in the Succession Cause though they knew he was on the land.

The applicant states that the respondent is the administrator of the estate of Luka Masakha aforesaid.

The applicant avers that by the time this grant was confirmed in 2014, he had already acquired 3 ½ acres of the same, the area he occupies by adverse possession for being on the land for a period in excess of 12 years.

The applicant says that the area he occupies has no dispute with the heirs. He says he is still on the ground and fully in occupation of the 3 ½ acres that are well demarcated. The hearing notice for this case for 08/06/2015 was served on the respondent by Mr. Peter Masika on 13/4/2015. Despite the Respondent never attended the hearing. There is no doubt that the applicant has been in peaceful continuous, and un interrupted occupation of 3 ½ acres of the suit land since 1968. He put his house in 1996. The area he has occupied is distinctively marked. It is known to the respondent.

No one has challenged this originating summons. By the time the respondent was granted the letters of administration of the estate of the late Luka Masakha, the applicant had acquired title by adverse possession of 3 ½ acres. This fact which was known by the beneficiaries should have been disclosed to the Succession Court. The 3 ½ acres were therefore not available for distribution as part of the estate of Luka Masakha. The heirs knew this since the applicant herein has lived there all along.

Indeed he is still there now.

I do order that the 3 ½ acres in which the applicant occupies shall be surveyed and a separate title shall issue. The same shall be hired from the suit land. The said 3 ½ acres shall be registered in the name of the applicant absolutely.

The Land Registrar Bungoma shall ensure that no further transaction shall be registered on the suit land until the 3 ½ acres are registered in the name of the applicant.

These are the orders of the Court.

**DATED at BUNGOMA this 30<sup>th</sup> day of July, 2015**

**S. MUKUNYA**

**JUDGE**