



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT BUNGOMA**

**MISC. APPLICATION CASE NO.135 OF 2014**

**JOSEPH WASIKE SUMBULE alias WASIKE SUMBULE.....APPLICANT**

**VERSUS**

**CHARLES KHAEMBA WAFULA.....RESPONDENT**

**RULING**

[1] The applicant prays that the orders granted to respondent on 20/5/2015 from his application dated 31/12/2014 be set aside. He equally prays that he be given time to file a replying affidavit to that application so that proper orders are given upon hearing both sides. It is argued that the property quoted on the first application 1459 is not the same as the one quoted in the extracted order as 1469.

[2] The respondent opposed the application he says that the same is not honest. That he sold 3 acres of land to the applicant and he wanted the land surveyed so that he can have his 2 acres and the applicant his three acres. He relied on his application paragraph 5.

[3] I have perused the application and I note that the Complaint is that the applicant was not served with the application dated 31/12/2014. The respondent has not denied that fact. In the interest of justice, the applicant should be afforded a chance to reply to that application. It is his Constitutional right.

[4] I therefore order that the orders made on 20/5/2015 are set aside. All other consequential orders made arising of that order are also set aside. The applicant is allowed to file a replying affidavit within 30 days from this ruling and the application shall be fixed for hearing on merits.

Each party shall bear its own costs.

Orders accordingly.

DATED at BUNGOMA this 2<sup>nd</sup> day of December, 2015

**S.N. MUKUNYA**

**JUDGE**