

REPUBLIC OF KENYA

IN THE HIGH COURT AT KAKAMEGA

SUCCESSION CAUSE NO: 366 OF 1993

IN THE MATTER OF THE ESTATE OF MAJINA SIKOYO.....DECEASED

AND

MARIO WANGACHI SIKOYO.....PETITIONER

VERSUS

PATRICK P. MACHIBA.....OBJECTOR

VERSUS

CAMULUS MUKOLWE SIKOYO.....APPLICANT

RULING

The application dated 5/5/2010 seeks an order of inhibition in relation to plot number **S.WANGA/BUCHIFI/249**. The application also seeks to cancel the confirmed grant issued on 19/1/1995 and the land reverts to the names of the deceased. The application is supported by the affidavit of Camulus Mukolwe Sikoyo.

The respondent filed a replying affidavit sworn on 13/4/2012. Counsel for the respondent filed written submissions while the applicant counsel relied on the application. I have gone through the pleadings herein, it is clear that whereas the applicant are of the view that the suit land measuring 41 acres is family land, the respondent is of the view that the applicant was given his own land.

The land was registered in the names of the respondent's father.

From the pleadings herein, it is not possible to determine the application fully without taking oral evidence from the parties. The applicant contends that he was using a portion of the suit land and has now been stopped. Oral evidence has to be taken on the entire dispute before the court can make an informed decision.

In order to preserve the suit land, I do grant prayers two (2) of the application dated 5/5/2010 pending the hearing and determination of the entire suit. Costs shall follow the outcome of the main suit. This being an old matter, the registry is directed to list the matter on three convenient consecutive days.

Dated, signed and Delivered at Kakamega this 27th day of February 2014.

SAID J. CHITEMBWE

JUDGE